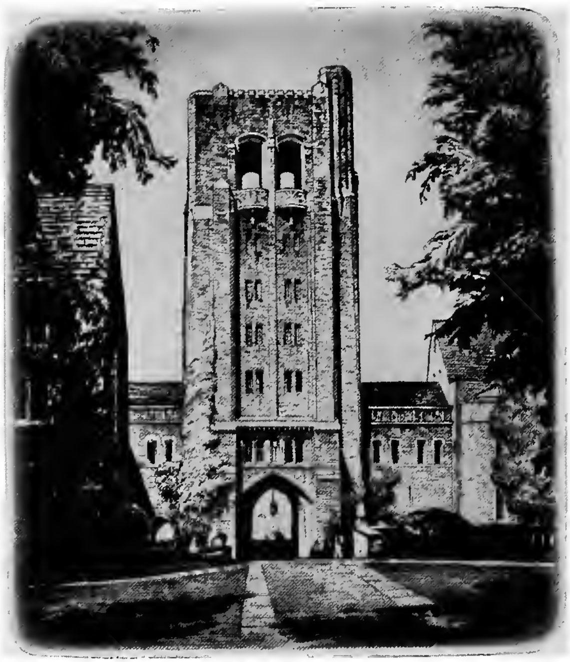

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THE
LAWS OF THE UNITED STATES
RELATING TO
NATIONAL BANKS
AS AMENDED, WITH COGNATE STATUTES
AND THE
FEDERAL RESERVE ACT

ANNOTATED

BY
WILLIS S. PAINE, LL. D.
AUTHOR OF "PAINE'S NEW YORK BANKING LAWS," "PAINE'S BUILDING AND LOAN ASSOCIATIONS," "SUMMARY OF FAILED SAVINGS BANKS," ETC.

SEVENTH EDITION

NEW YORK
BAKER, VOORHIS & CO.
1914

PREFACE TO SEVENTH EDITION

The author consented with great reluctance to have Paine's Banking Laws divided so as to make two separate volumes, one containing the National Banking Law, and the other containing the New York Banking Law. For six editions both laws had been published in one volume. The publishers decided that the new (seventh) edition was so large that this course was necessary.

The enlargement by the New York Legislature in the recent (1914) revision of the Banking Law increasing the number of sections and the addition of the Federal Reserve Act of thirty sections, besides the numerous court decisions made since the last edition, seemed to justify the publisher's decision.

W. S. P.

334 Fifth Avenue
July 1, 1914.

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INTRODUCTION

THE first Bank of the United States was chartered in 1791. After an existence of twenty years, the bill to re-charter the same was defeated in each house of Congress by a single vote. Five years afterwards a second United States Bank was created, which likewise continued in existence twenty years.[1]

After the downfall of the second United States Bank, several unsuccessful attempts were made to establish a National Bank. During the administration of President Tyler, Congress passed a bill creating such a bank. This bill was vetoed by him because of certain features which he alleged were objectionable; yet notwithstanding the removal by Congress of the objectionable features from the bill, he vetoed it a second time.

The Treasury Department was established September 2, 1789. The Government began its existence by assuming debts amounting in the aggregate to $72,775,895, of which $12,556,874 was foreign, and $40,256,802 was domestic debt of the Confederation, and $19,962,219 was debt of the States.

From 1833, when the renewal of the bank charter was refused, to 1836, the note circulation of the country increased from $94,000,000

[1] Blaine's Twenty Years of Congress, vol. i., p. 418.

to $149,000,000. The public debt was paid in full in 1835. In the year 1836 the Government found itself in the possession of a large surplus revenue, amounting to over $40,000,000, resulting chiefly from the sale of public lands. All such surplus, except the sum of $5,000,000, was distributed among the States, on the basis of their respective Congressional representation.

On January 1, 1849, the public debt was $63,000,000. The greater part of this sum was incurred by reason of the Mexican war. It was increased $5,000,000 in 1850 by the payment of the Texan Indemnity. January 1, 1851, the debt amounted to $68,304,796, and January 1, 1857, it amounted to but $28,699,831.

In 1846, Congress established the Independent Treasury. From that time the Government has collected and disbursed its revenues, without the intervention of the banks. Its receipts and payments were thereafter in specie alone. This was the system in vogue at the beginning of the civil war in 1861. At that time the debt of the Government was $90,580,873. The increase was due to the expenses of several Indian wars, and to some small loans made in anticipation of internal difficulties.

Treasury Notes

Prior to the civil war, no bank of issue had ever been created by the Government of the United States. At that time the amount of paper money in circulation by State banks was about $200,000,000, three-fourths of which had been issued by the banks located in the Northern States. On July 17, 1861, Congress authorized the issuing of Treasury notes payable on demand, to the amount of $250,000,000, or so much thereof as the Secretary of the Treasury might deem necessary for the public service. This law did not make such notes a legal tender.

Statutes were enacted during the year 1862 by the national legislature, on February 25, and July 11, authorizing the issue of Treasury notes to the amount of $300,000,000, of which sum $50,000,000 were in lieu of the notes issued in pursuance of the act first mentioned. This last issue was made a legal tender except in payment of duties on imports, and of interest on the national debt. By the act of March 3, 1863, an additional issue of $150,000,000 of Treasury notes was authorized. On June 30, 1864, an act was passed providing that the total

of legal tenders should not exceed $400,000,000, and such additional sum not exceeding $50,000,000, as might be "temporarily required for the redemption of temporary loans."

The highest point which the government debt ever reached was $2,844,649,626, August 31, 1865, when the annual interest charge was $150,977,697. The largest amount of legal tenders was in circulation during this year, and aggregated $432,687,966. On April 12, 1866, a statute was enacted to fund the legal tender notes, under which more than $72,000,000 were retired; but on February 4, 1868, an act became a law without the approval of the President, whereby any further reduction was prohibited, thus leaving the volume of legal tenders outstanding at $356,000,000. After the year 1865, many of the State banks changed to the national system because of a law passed March 3, 1865, imposing a tax of ten per centum on the amount of notes of any State bank or banking association paid out after July 1, 1866.

The law of March 18, 1869, declared the faith of the United States to be solemnly pledged to the payment, in coin or its equivalent, of all its obligations, not bearing interest, known as United States notes, and of all its obligations bearing interest, except in cases where the law authorizing the issue of any such obligations has expressly provided that the same might be paid in lawful money, or other currency than gold or silver.

The maximum amount of Treasury notes to be issued was fixed at $382,000,000 by section 6 of the act of June 20, 1874.

A statute entitled "An act to provide for the resumption of specie payments," was enacted January 14, 1875, whereby Congress repealed section 5177 of the Revised Statutes,[2] limiting the aggregate amount of circulating notes of national banking associations, and enacted that whenever and so often as circulating notes should be issued to such associations, it should be the duty of the Secretary of the Treasury to redeem legal tender notes to the amount of eighty per centum of the national bank-notes so issued, and to continue such redemption until there should be outstanding the sum of $300,000,000 of such legal tender notes and no more; and that on and after the 1st day

[2] In June, 1866, Congress directed the revision and consolidation of all the general and permanent statutes of the United States (ch. 140). Such revision, embracing the laws in force December 1, 1873, was approved June 20, 1874, and was entitled the "Revised Statutes of the United States" (ch. 338).

of January 1879, that officer should redeem in coin the United States legal tender notes then outstanding, upon their presentation for redemption at the office of the assistant Treasurer of the United States, in the city of New York, when presented in sums of not less than $50.

The act of June 20, 1874, previously mentioned, authorized banks to deposit with the Treasurer lawful money for the redemption of their circulation, and to withdraw from deposit a proportionate amount of bonds. Many banks, induced by the high premiums upon their government bonds and by the low rates of profit to be gained by issuing circulating notes, availed themselves of this authorization, and withdrew their circulation in whole or in part; hence the effect of the law under discussion, although it removed all bounds to the increase of notes to be issued by the banks both as to amount and geographical limits, was not to augment, but on the contrary, for a considerable period, decidedly to diminish the volume of circulation. To enable the Secretary of the Treasury "to prepare and provide for the redemption in this act authorized or required, he is authorized to use any surplus revenues, from time to time, in the Treasury not otherwise appropriated, and to issue, sell and dispose of, at not less than par in coin," any of the five, four and a half and four per cent. bonds authorized by the law of July 14, 1870. The unlimited power thus given to the Secretary of the Treasury by this law, enabled him to deter by the sale of bonds, any transfer of coin to foreign countries which transfer might have hazarded the redemption of the legal tender notes.

On May 31, 1878, a statute was enacted, entitled "An act to forbid the further retirement of United States legal tender notes." This law was to the effect that it should be unlawful for the Secretary of the Treasury to cancel or retire any more legal tender notes, but when any of the same were redeemed or received into the Treasury under any law, they should not be retired or destroyed, but should be re-issued, and kept in circulation. This statute in terms repealed all laws in conflict therewith. It is evident that the intention of this act was, that notes re-issued should retain their original quality of legal tender. A decision of the Supreme Court of the United States in connection with this statute declares, that Congress has the constitutional power to direct, at any time in its discretion, unlimited issues of Treasury notes with all the legal attributes of coin. In other words, the National Legislature may make any kind of paper currency a legal tender in

payment of private debts, and this power may be exercised whenever a condition of affairs obtains which that body shall consider to be an exigency.[3]

National Bank Act

The Secretary of the Treasury, in his annual report for 1861, submitted two plans for obtaining the necessary means for prosecuting the civil war:

First, to substitute government notes payable in coin on demand, for those already issued by private corporations.

Second, gradually to issue national bank-notes secured by the pledge of government bonds, to take the place of the then existing State bank-notes issued pursuant to authority derived from the statutes of the several States.[4]

[3] This decision was given in Juillard *v.* Greenman, 110 U. S. 421, 28 L. ed. 204, 4 Sup. Ct. Rep. 122.

[4] See report of Millard Fillmore, Comptroller of the State of New York, December 30, 1848 (pp. 56, 57), suggesting that circulating notes issued by State banks be secured by United States stocks, the same "To be received for public dues to the national treasury; this would give to such notes a universal credit, co-extensive with the United States, and leave nothing further to be desired in the shape of a national paper currency."

An article written by John J. Knox, formerly Comptroller of the Currency, may be found in Hunt's Merchant's Magazine of January, 1862, advocating the passage by Congress of a National Bank Law of a character like to the Free Banking Act of the State of New York.

During the month of August, 1861, Orlando B. Potter, of the city of New York, submitted to President Lincoln and to Secretary Chase a plan for a national currency secured by government stocks. This plan was to permit banks and bankers, duly authorized, in the loyal States, to secure their bills by depositing, with a superintendent appointed by the Government, government stocks at their par value, in the same way that the banks and bankers in New York then secured their circulation, by depositing stocks of the State of New York or of the United States with the State Banking Department, thus making the stocks of the United States a basis of banking on which alone a national circulation can be secured. To do this, he stated, "It is necessary only for the Government to authorize and appoint a superintendent connected with the treasury, whose duty it shall be to receive from duly authorized banks and bankers within loyal States, United States stocks in sums of not less than, say, $200,000 from one party, and hold the same as security for an equal amount of bills to be properly stamped and signed by such superintendent, and delivered to the depositing bank or banker. This mark or stamp and signature of such superintendent to guarantee to the holder of the bills issued, that the same are secured by United States stocks deposited with and held by the Government; and that in case the same

That officer in his report urged the adoption of the second of these plans. A bill [5] to establish national banks having been introduced in Congress, it was urged that the proposed system would prove of great benefit in furnishing a permanent market for the large issues of bonds, which it was then evident must be made to meet the expenditures of a great war. The bill met with strong opposition; but after spirited and able debate, it passed both branches of the National Legislature by an exceedingly small majority, and became a law February 25, 1863 (ch. 68.) The statute creating this system of national banks is dissimilar in many essential respects from the previously mentioned laws incorporating the two Banks of the United States. This act is entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," and is based upon the Free Banking Act (ch. 260, Laws of 1838) of the State of New York. The satisfactory experience of the people of New York in connection with the practical working of the General Banking Law of 1838, doubtless led to the adoption, by the National Legislature, of its leading features; and it is a remarkable fact, that experience has demonstrated, that only in a few instances have either the State or the National Act required any change in order to improve them. Prior to November 28, 1863, 134 national banking associations had organized, under this law, having a total capital of $7,184,715. The bonds deposited with the Treasurer amounted to $3,925,275.

The act of 1863 was repealed during the first session of the Thirty-

shall fail to be redeemed by the bank or banker issuing them, then on due demand and protest, such superintendent will sell, after proper notice to the bank or banker, and apply to the redemption of said bills, the stocks held to secure the same.

"This money might properly be designated United States currency, as distinguishing it from the bills issued in the several States, and not thus secured; and should be so plainly and unmistakably designated as to be readily distinguishable everywhere at sight. It might be received and paid out by the government in cases where it is not otherwise agreed or provided, but this is not at all essential to the plan, and might encounter the prejudices of those who think specie more reliable than the faith and covenant of the government under which they live." He further stated that the foregoing plan would be fully understood, by an examination of the statutes of this State regulating the securing of their circulations by our banks, by deposit with the State. It will be noticed that this is the plan substantially adopted by Congress, February 23, 1863, with the exception that national banks were created subject to the supervision of the general government.

[5] This bill was introduced by Elbridge G. Spaulding, formerly Treasurer of the State of New York, and then representing the Second Congressional District of that State.

eighth Congress, by the law of June 3, 1864; the latter being a substitute act containing similar provisions. It was placed in the sixty-second title of the revised statutes for the year 1873, and by an act of Congress on June 20, 1874 it was denominated the National Bank Act. The few amendments and additional acts which have been passed by Congress, from time to time, are hereafter mentioned in foot notes, and are printed in full.

On October 1, 1865, there were in existence 1,513 national banking associations with a capital of $395,729,597.83, and having bonds deposited with the Treasurer to the amount of $276,219,950.

National Gold Banks

July 20, 1870, an act was passed, authorizing the organization of national gold banks. These banks are permitted to receive from the Treasurer of the United States, upon government bonds deposited with him, eighty per centum thereof in circulating notes. Such notes are payable in gold at the office of issue, and are a legal tender in payment of debts to any other national gold bank, provided the association by which they were issued is still redeeming its notes. These banks are obliged to maintain a reserve in gold and silver coin of an amount equal to one-quarter of their circulation; and, except as to circulation, are subject to the same regulations as other national banks. An act of Congress passed February 14, 1880, authorized the conversion of national gold banks into currency banks, with the same powers and privileges granted by law to the latter associations.

Amendments.

An important statute which became a law July 12, 1882, is entitled "An act to enable national banking associations to extend their corporate existence, and for other purposes." It permitted such banks to extend the period of succession for not more than twenty years, by an amendment to their articles of association. A further act of April 12, 1902 (*post*), extends this period to twenty years additional. The law also provided, that "The jurisdiction for suits brought subsequent to its enactment in connection with any of such associations, except suits between them and the United States, or its officers or agents, shall be the same as, and not other than, the jurisdiction for

suits by or against banks not organized under the United States Statutes, which do or might do a banking business where such national banking associations may be doing business, when such suits may be begun." Section 12 of this act authorized and directed the Secretary of the Treasury to receive deposits of gold coin, and to issue certificates for the same; such certificates as well as silver certificates, to be counted as part of the lawful reserve of banks. The object of this amendment is to make the use of specie more available, by saving the expense of transporting it from place to place. Section 5146 of the National Bank Act, was amended February 28, 1905, to the effect that a director of a national bank of a capital of not exceeding $25,000 shall own five shares of stock, instead of ten, as before required.

By the original law national banks were required to pay their own notes over their counter, and also to redeem them through the agency of a like bank located in one of eighteen enumerated cities, called redemption cities; but by section 3 of the act just quoted, they were required to redeem their notes at the Treasury of the United States. Banks carrying on business in these cities are required to appoint a redemption agent in the city of New York. Sixteen of the cities are now termed reserve cities [6] in the statute. But, by an act passed March 3, 1903, it was provided that upon the request of three-fourths of the national banks in any city having a population of twenty-five thousand, such city may be added to the list of reserve cities. March 3, 1883, the capital and deposits of banks, bankers and national banking associations were excepted from taxation by the act passed to reduce internal revenue taxation; and it may be added, the law imposing the stamp tax on bank checks was repealed by the same act. An amendment to section 5200 of the Revised Statutes of the United States became law June 22, 1906. The amendment changed the section so as to read as follows: "The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such associations, actually paid in and unimpaired and one-tenth part of its unimpaired surplus fund: Provided, however, That the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the association. But the discount of bills of exchange drawn in good faith

[6] See § 5192, U. S. R. S. *post.*

against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed."

May 1, 1886, a law was passed which provided that any national bank may, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of its stock, increase its capital in accordance with existing laws, to any sum approved by that officer, notwithstanding the limit fixed in its original articles of association and determined by him; and no increase of capital either within or beyond the limit fixed in its original articles of association may be made except in this manner.

At the request of the Comptroller of Currency the National Bank Act was materially amended by a statute which became a law May 30, 1908. This statute amended sections 5172 and 5214 of the National Bank Act; and section 9 of the Act approved July 12, 1882, amended March 4, 1907, was further amended. It provided (section 17) for the creation of a "National Monetary Commission" to be composed of nine members of the Senate and nine members of the House of Representatives.

Any national bank may change its name or the place where its operations of discount and deposit are to be carried on, to any other place within the same State, not more than thirty miles distant, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock. A duly authenticated notice of the vote and of the new name or location selected should be sent to that officer; but no change of name or location is valid until he has issued his certificate of approval of the same. All debts, liabilities, and powers under its old name devolve upon and inure to the association under its new name.

A statute passed August 13, 1888, provides that in all litigations affecting national banks they shall be deemed citizens of the States in which they are respectively located, and in such cases the United States courts do not have jurisdiction other than such as they would have in litigations between individual citizens of the same State.

[It should be noted that the Act of August 13, 1894, declares that circulating notes and legal tender notes and certificates, and coin, shall be deemed taxable as money on hand or on deposit; and that the Act of March 2, 1897, made substantial changes in section 3 of the Act of June 30, 1876, and more specifically regulates the distribution of the assets of insolvent banks.]

Certification of Checks

The last section but one (13) of the statute of July 12, 1882, provided that certified checks are not to be issued contrary to the provisions of the act of March 3, 1869, being section 5208 of the United States Revised Statutes, and prescribed a penalty for such illegal issue, and that conviction therefor should result in the imposition of a fine of not more than $5,000, or imprisonment for not more than five years, or both, in the discretion of the court. The act just mentioned was the first legislative notice taken of the certification of checks.

The last mentioned section provided that it should be unlawful for any officer, clerk, or agent of any national bank, to certify any check drawn upon said bank, unless the drawer should, at the time such check is certified, have on deposit in said bank an amount of money equal to the amount of such check, which was, nevertheless, if certified, to be a good and valid obligation against the bank. The only penalty, previous to this enactment, for such illegal certification, was the appointment by the Comptroller of a receiver of the offending institution.

It may not be irrelevant to add that the custom of certifying checks on credit originated with the banks of the State of New York and was time-honored long before the present national banking system came into existence; and experience does not indicate that such loans of credit have been a source of disaster to either the banks of this State or the national banks. It is as proper for a bank to loan its credit in one form as it is in another.

National Banking System

May 31, 1914, there were in existence 7,528 national banking associations, which is the largest number in operation at any time. Since the establishment of the system, 10,457 have been organized.

The act known as the Currency Act of 1900, passed March 14th, 1900, contained an amendment which empowered the Comptroller of the Currency to authorize the organization of banks with a minimum capital of $25,000 in places having a population not exceeding three thousand. It is to be noted that the same act repealed section 5193 of the National Bank Act.

National banks were established for the purpose in part of providing a currency for the whole country, and in part to create a market for the bonds of the general government; it could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the States, or to ruinous competition with State banks. On the contrary, much has been done to insure their taking the place of State banks. The incorporation or continuance of the latter has been discouraged by the imposition of a tax upon their issues so large as to compel a withdrawal of all issues from circulation.[7] National banks are instruments designed to be used to aid the government in the administration of an important branch of the public service; they are means appropriate to that end. Of the necessity which existed for creating them, Congress is the sole judge. The States, as such, can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. To attempt to do this is "an abuse, because it is the usurpation of power which a single State cannot give." "The States have no power, by taxation or otherwise, to burthen, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." [8]

Our past financial system was a mosaic of emergency legislation. It came into being by reason of the civil war, at a time when the nation had to adopt expedients to avert possible destruction.

The National Bank Act has existed fifty-one years; hundreds of judicial decisions have been rendered as to the meaning of its various portions. It has been approved by successive Congresses, and it has the complete confidence of the nation. Amended by the Federal Reserve Act, it is to-day a much more nearly perfect statute than in its beginning.

In the amendment to the National Bank Act which became a law May 30, 1908, it was provided that national banks shall be exempted from maintaining a reserve against United States deposits which are held to include not only deposits made by direction of the Secretary of the

[7] Tiffany *v.* National Bank of Missouri, 18 Wall. 409, 21 L. ed. 862; First National Bank of Clarion *v.* Gruber, 87 Penn. St. 477, 30 Am. Rep. 378.

[8] Farmers, etc., National Bank *v.* Dearing, 91 U. S. (1 Otto) 29, 23 L. ed. 196, citing Weston *et al.* *v.* Charleston, 2 Pet. 466, 7 L. ed. 487; McCulloch *v.* Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn *v.* Bank of United States, 9 Wheat. 708, 6 L. ed. 204; Brown *v.* Maryland, 12 Wheat. 419, 6 L. ed. 678; Veazie Bank *v.* Fenno, 8 Wall. 533, 19 L. ed. 482.

Treasury, but deposits of United States disbursing officers and postal savings funds, that is, all government accounts upon which interest is paid. In computing the reserve required and held, to the net amount due to national and other banks, are added dividends unpaid and individual deposits, and from the gross amount so obtained the following deductions are made: Checks on other banks in the same place, exchanges for clearing houses, and national bank notes. The remainder is the amount upon which the required 25 or 15 per cent. reserve is determined. The 5 per cent. redemption fund is then deducted, leaving the net reserve required to be held. An act was approved March 2, 1911, to the effect that certified checks drawn on national or State banks are receivable for duties on imports and internal taxes, *post.*

The Federal Reserve Act

After a full discussion, Congress enacted a law entitled "An act to provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes." This law was approved on December 23, 1913.

This statute is one of the greatest constructive laws ever approved by the Federal legislature; it may be said to change the financial map. It is no secret that before the law was adopted, not a few banks had been quietly decreasing their loans and increasing their reserves. This action increased the feeling of distrust. The adoption of the new statute gave assurance of the policy to be pursued as to cashing commercial paper and supplying a currency to meet the demands of trade. At once confidence in the ability of the banks to meet depositors' demands was restored but whatever may be the result claimed by the enthusiastic advocates of the measure, its machinery cannot be operated without competent financial engineers.

The statute known as the National Bank Act (based on the laws of New York of 1838 ch. 260) gave the nation a safe form of money, which, although not legal tender, is taken everywhere. It is almost wholly preserved under the Federal Reserve Act.

Certain amendments to the Revised Statutes of the United States to be found in that act, are of very material importance.

The statute as to the conversion of State banks to the national banking

system is modified to a slight extent. Heretofore, authority for conversion was acquired from shareholders representing two-thirds of the stock, and by implication either by vote or written consent. The amendment to section 5154, U. S. R. S., requires the vote of shareholders representing but fifty-one per cent. of the stock. Conversion, however, is only permissible when not in violation of State statutes (section 8, *post*). The courts have heretofore held that no authority from a State was necessary to enable a State bank to become a national banking association. Such banks are eligible to membership in the Federal reserve banks provided they possess unimpaired capital sufficient to entitle them to become national banking associations under the National Bank Act. Such member banks must submit to the regulations prescribed by the Organization Committee of the Federal Reserve Board.

Section 9 provides that a State bank that may make application for the right to subscribe to the stock of the Federal reserve bank that may be organized or is to be organized in the Federal reserve district where the applicant is located, shall conform to certain sections of the Revised Statutes of the United States. One is the provision imposed upon national banks in connection with the limitation of loans (section 5200); other provisions are the purchases of or loans upon the security of its own shares (section 5201); withdrawal of capital or payment of unearned dividends (section 5204); impairment of capital (section 5205); false certification of checks (section 5208); embezzlement, false entries, etc. (section 5209); reports of conditions (section 5211); earnings of dividends (section 5212); failure to make the required reports (section 5213); [9] and the law as to usury (section 5198).

[9] It may be well to compare the powers possessed by the national banks with institutions of the various States. National banks possess the prestige that attaches to the name "national." Another advantage is the right to act as depositaries for government funds. They are allowed to act as reserve agents for other banks, and they possess the privilege of issuing notes. The excess profits to a bank of issuing notes, provided the notes are kept in circulation all the time, are, however, only about 1.2 per cent. per annum. On the other hand, some State banks have the privilege of acting as reserve agents for other State institutions and, while they cannot receive Federal deposits, they can receive deposits of State and municipal funds. Such banks in some cases have the privilege of acting in fiduciary capacities. Again they are very generally permitted to invest their funds in bonds and stocks, and in some instances, are allowed to loan on real estate securities. They are also allowed the right to use national bank notes as reserves, but the reserve requirements imposed by State laws are in a majority of cases smaller than those demanded by the law for national banks.

The Act (section 10) provides that section 324, U. S. R. S. be amended so as to read that there shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of national currency secured by United States bonds, and under the general supervision of the Federal Reserve Board, of all Federal reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency, and shall perform his duties under the general directions of the Secretary of the Treasury.

Section 5202, U. S. R. S., was amended by section 13 so as to read that no National Banking Association shall at any time be indebted, or in any way liable to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

First: Notes of circulation.

Second: Moneys deposited with or collected by the association.

Third: Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

Fourth: Liabilities to stockholders of the association for dividends and reserve profits.

Fifth: Liabilities incurred under the provisions of the Federal Reserve Act.

Section 17 repeals so much of the provisions of section 5159, U. S. R. S., and section 4 of the Act of June 20, 1874, and section 8 of the Act of July 12, 1882, and of any other provisions of existing statutes, that require that before any national banking associations shall be authorized to commence banking business, it shall transfer and deliver to the Treasurer of the United States a stated amount of United States registered bonds.

Section 20 of the Federal Reserve Act repeals so much of sections 2 and 3 of the Act of June 20, 1874, entitled "An act fixing the amount of United States notes, providing for a redistribution of the national-bank currency, and for other purposes" as provides that the fund deposited by any national banking association with the Treasurer of the United States for the redemption of its notes shall be counted as a part of its lawful reserve as provided in the act aforesaid. It also provided that after the passage of that act such fund of five per centum shall in no case be counted by any national banking association as a part of its lawful reserve.

Section 21 amends section 5240, U. S. R. S., so that the Comptroller of the Currency, with the approval of the Secretary of the Treasury shall appoint examiners whose duty it is to examine every member bank at least twice in each calendar year, and oftener if considered necessary.

Section 27 re-enacts sections 5153, 5172, 5191 and 5214, U. S. R. S. (which were in part amended or repealed by the Act of May 30, 1908) to read as such sections read prior to that date. It also provides that prior to June 30, 1915, national banking associations having circulating notes secured otherwise than by bonds of the United States, shall pay for the first three months a tax at the rate of three per centum per annum upon the average amount of such of their notes in circulation as are based upon the deposit of such securities, and afterwards an additional tax rate of one-half of one per centum per annum for each month until a tax of 6 per centum per annum is reached, and thereafter such tax is 6 per centum per annum upon the average amount of such notes.

Section 28 amends section 5143, U. S. R. S., so that any association formed under this title may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by this title to authorize the formation of associations; but no such reduction shall be allowable, which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by the said Comptroller of the Currency and by the Federal Reserve Board, or by the organization committee pending the organization of the Federal Reserve Board.

Attention is called to other provisions of importance in the various sections. Section 1 defines the word "bank" as used in the Act; also the terms "board," "district," "member bank," and "reserve bank."

Pursuant to section 2, every national bank is required to subscribe to the capital stock of a Federal Reserve Bank in a sum equal to six per centum of the capital stock, and surplus of such bank. The shareholders of every Federal Reserve Bank are individually responsible for all contracts and debts of such banks to the extent of their subscriptions to the stock of the same at par. This is in addition to the amount subscribed "whether such subscriptions have been paid up in all or in part under the provisions of the act." Any national bank that fails to signify its acceptance of the terms of this act within sixty days, ceases

to act as reserve agent. Any such bank that fails within one year after the passage of this act to become a member bank, or fails to comply with the provisions of this act, loses its franchise. Paragraph 1 states that districts shall be designated by numbers. By Paragraph 13 of that section, the present classification of reserve and central reserve cities is continued. The final paragraph prevents the commencing of business by a Federal Reserve Bank with a subscribed capital of less than $4,000,000.

By section 3, every Federal Reserve Bank must establish branch banks within the Federal reserve district in which it is located. Section 4 states how a Federal reserve agent shall be chosen for each reserve bank, his qualifications, and how his salary shall be determined and paid. It provides that the Board of Directors shall consist of nine members, holding office for three years, and divided into three classes designated as class A, B and C. It is provided that the members of the two first named classes shall be elected by member banks, but the members of class C are elected by the Federal Reserve Board. It provides that no Senator or Congressman shall be eligible for membership on the board of directors. Paragraphs 10, 11, 14, and 15 of this section state the powers of reserve banks.

Section 5 provides for stock issues and the increase and decrease of capital.

Paragraph 1 of section 6 provides for certificates concerning the increase and decrease of stock.

Section 7 relates to the division of earnings. The second paragraph enacts that the surplus earnings of reserve banks may be used to retire United States bonds, and by paragraph 3, Federal reserve banks are exempt from all taxation, except taxes upon real estate.

Paragraphs 1 and 3 of section 8 provide how State banks may be converted to national banks. It is, however, expressly provided that such conversion shall not be in contravention of the State law.

Paragraph 2 of section 9 provides the conditions of membership for State banks. They must have a paid-up capital equal to national banks and accept certain regulations which are stated in paragraph 3. They must submit to certain penalties for violation of the provisions of this section or the regulations of the Federal Reserve Board.

Section 10 treats especially of the Federal Reserve Board. Other sections referring to this Board are sections 4, 9, 10, 11, 13, 14, 16, 19, 21, 24, 25 and 28.

Section 11 treats of the powers of the Federal Reserve Board in detail.

Section 12 creates Federal Advisory Councils and states how the members are to be appointed, their meetings and powers.

Section 13 discusses the powers of Federal reserve banks. The first paragraph treats of deposits. They may be government depositaries, and they may be required to act as fiscal agents.

Open market operations are discussed in section 14. The first paragraph of this section authorizes and defines such operations.

It is stated in the first paragraph of section 15 that government deposits may be made with Federal reserve banks, and the second paragraph permits such deposits to be made with member banks.

General provisions as to the Federal reserve notes are to be found in section 16.

The provisions of section 17 have been previously mentioned.

Paragraphs 2, 3 and 4 of section 18 treat of the purchases of United States bonds by reserve banks. The refunding of two per cent. issues is set forth in detail.

The subject of section 19 is bank reserves. By sub-division (a) a bank not in a reserve or central reserve city must hold and maintain reserves equal to 12 per centum of the aggregate amount of its demand deposits, and 5 per centum of its time deposits. By sub-division (b) a bank in a reserve city must hold and maintain reserves equal to 15 per centum of the aggregate amount of its demand deposits, and 5 per centum of its time deposits. By sub-division (c) a bank in a central reserve city must hold and maintain reserve equal to 18 per centum of the aggregate amount of its demand deposits, and 5 per centum of its time deposits.

Section 20 has been previously mentioned.

Section 21 treats of bank examinations. Every member bank must be examined at least twice in each calendar year, and oftener if considered necessary. The Federal Reserve Board must order at least once each year an examination of each Federal reserve bank, and upon joint application of ten member banks the Federal Reserve Board must order special examination and report of the condition of any Federal reserve bank.

Section 22 provides that examiners shall not perform any service for compensation other than that of examination of a bank. Penalties are provided for the punishment of examiners who receive any gratuities from banks. Examiners, public or private, are not permitted to disclose

the names of borrowers of the collateral for loans of a member bank to other than the proper officers of such bank, without having obtained permission so to do.

Section 23 modifies and defines a double liability of stockholders of national banks.

It is stated in section 24, paragraph 1, that national banks not in reserve cities may make loans on farm lands. The amount and length of such loans is stated in paragraph 2, and the Federal Reserve Board is empowered to curtail the list of cities in which national banks shall be permitted to make such loans.

Section 25 provides for the establishment of foreign branches by national banks.

Paragraph 1 of section 26 provides as to the gold reserve to be maintained by the Secretary of the Treasury.

The second paragraph of section 27 treats of emergency issues under the Aldrich-Vreeland Act.

Provisions of section 28 have been previously mentioned.

Section 29 is to the effect that if any part of this act shall be adjudged invalid, such judgment shall not invalidate the remainder of the act.

Section 30 provides that the right to amend, alter or repeal the act is thereby expressly reserved.

Within the last fifty years our country has had six panics, namely, 1873, 1884, 1890, 1893, 1901 and 1907.[10]

There is no question but that, to a material degree, these panics resulted from defects in our system of banking. Such panics have been mitigated to some extent by the use of clearing house loan certificates.[11]

[10] During the great business depression of the year 1907, the fact was emphasized that New York is the financial distributing center of the country. More than the entire net loss in the national bank reserves fell upon the national banks of that city. The national banks outside of New York City were able, by the aid of that city, to maintain an amount of cash actually larger by a small amount on December 3, of that year, than they held at the date of the previous report to the Comptroller on the preceding August 22, when conditions were comparatively quiet. The national banks of that city met the demand for currency until their reserves were reduced $54,103,600, below the legal limit, but in addition, they imported and distributed $95,000,000 in gold, and distributed also all of the money of the Government deposited with them. The sum of $218,275,304 was provided by the banks of the metropolis of the $296,000,000 absorbed throughout the country.

[11] Such certificates were receipts stating there is on deposit with the clearing house association approved collateral to an amount sufficient to warrant the issue of the certificates. They have been termed "warehouse receipts," which pass as currency

On the 4th day of March, 1914, the total reserves of the 7,494 national banks aggregated $1,547,592,375, an average of 20.62 per cent., and $47,529,429 above the amount required to be held. The capital stock of such banks was $1,056,482,120, and the surplus fund was $731,273,096.28. The statement shows that the national banks are in excellent condition to meet the demands of the new law.[12]

As has been stated hereinbefore each national bank must subscribe six per cent. of its capital and surplus to the capital of the reserve bank in its district. By the entrance into the new system of State banks and trust companies, the capital of all reserve banks will be near $110,000,000.

The section (13) in the Federal Reserve Act which denies to banks the rediscount privilege on notes secured by stocks and bonds was incorporated in that statute for the specific purpose of preventing a repetition

among the members of the association in payment of daily business. These certificates relieved the situation locally, but not as between different money centers. When banks with the best of assets could not get money unless they bought it abroad, and at a high premium, and when other countries were in as bad a condition as ourselves, the issue of such certificates needed no apology. In this connection, the Aldrich-Vreeland statute should be consulted. (See section 27, *post.*) It may be stated here that with the volume of exchanges the 162 clearing houses of the United States aggregated for the year ending September 30, 1913, $173,765,288,000, an increase of $5,564,362,000 over the preceding year. Of this sum, the association of the city of New York cleared $98,121,320,000, or nearly 56½ per cent. of the total. In only three years of its existence have the clearings in that city been larger than this sum, namely, in 1906, when they aggregated $103,754,900,000; 1909, $99,257,662,000, and in 1910, $102,553,959,000. That association is composed of 31 national banks, 17 State banks and 15 trust companies, the aggregate capital of which is $179,900,000. To this number should be added 25 banks and trust companies in the city of New York and its vicinity, which, while not members of the association, make their exchanges through banks which are members.

[12] The banking power of the United States, including capital, surplus, undivided profits, deposits, exclusive of bank deposits and national bank notes issued as circulation, aggregates $23,181,545,433, the like power of New York State banks and trust companies aggregates $2,035,000,000 and the savings banks of the State contribute the additional sum of $1,926,000,000 making New York State's percentage 17 per cent. of the total for all banks in the United States.

The banking power of the New York City banks and trust companies alone is 8¾ per cent. of the total for the United States.

The total banking capital, including surplus and undivided profits of all the banking institutions in our country is nearly $4,448,000,000. The aggregate capital surplus and undivided profits of trust companies and State banks in the State of New York aggregates $339,000,000. This is more than 7½ per cent. of the total for the country, but to these figures should be added a surplus of the savings banks of the State, which amounts to $116,000,000, making the sum of the Empire Commonwealth $455,000,000 or over 10 per cent. of the country's total amount.

of aid given the security markets by banks in the last thirty years. It is a principle of double entry bookkeeping that wherever there is a debit there is a corresponding credit. Banks which confine loans to advances on the accounts or notes between merchants can liquidate and be left with capital and surplus intact. When the proper relation which investment funds should have to current funds is upset, for instance, by the issuance of very many securities, thus drawing funds from current account into investment account, financial conditions must reflect the same condition.

The same section also provides that upon the indorsement of any of its member banks with a waiver of demand, notice and protest of such bank, any Federal reserve bank may discount notes, drafts and bills of exchange arising out of actual commercial transactions. It is provided, however, that such notes, drafts and bills must have a maturity at time of discount of not more than ninety days. Such banks may discount acceptances which are based on the importation or exportation of goods and which have a maturity at time of discount of not more than three months, and indorsed by at least one member bank. This act also provides that any member bank may accept drafts or bills of exchange drawn upon it and growing out of transactions involving the importation or exportation of goods having not more than six months sight to run.

A banker's acceptance should be among the best of obligations. The ultimate lender is in possession of an easily convertible evidence of debt, upon which money can always be secured, and which in the case of a bank or trust company can properly be reckoned as part of the secondary reserve, being readily available for rediscount.

As a secondary reserve it is preferable to call loans which, though nominally available on the instant, are practically uncallable in times of panic, because to insist upon their payment might result in such a depreciation of securities that insolvency would ensue. In theory, call loans are liquid and financial institutions have used them as investment for their secondary reserve at rates too low when the trouble involved is considered. As a substitute for call loans, bankers' acceptances are attractive. They will pay a high rate of interest, will be more available, and will make the accepting concern a custodian of credits. It may be added that the guarantee of the borrowers' responsibility will eliminate most of the hazard incidental to the use of single name paper.

The title "call loan" is illusory, for there are times when the general

calling of such loans would lead to a panic. Bankers' acceptances are not only more available, but more attractive. The general use of the acceptance feature by European banks shows disadvantages. It need not be added, however, that the privilege given banks to make acceptances should not result in the incurring of responsibilities which cannot readily be met.

The function of the reserve banks is to aid, not compete with the banks supported by private capital. While they have the right, under the new currency law, to deal in foreign acceptances, it is not probable that they will pursue this course.

The Federal Reserve Act preserves all of our present circulation, although by section 18 it is made to ultimately retire the national bank notes at the rate of not over $25,000,000 per year, if the exigencies of government finances permit.

The success of a plan for banking and currency reform depends on whether or not it provides a currency which will always be worth its face in gold; also a plan by which the amount of such currency can be increased to meet the legitimate demands of commerce and be automatically reduced when such currency is no longer required, together with a governmental supervision which will be able to prevent the exploitation of the same by any group of interests.

The design of the new law is to effect a substitution of commercial assets as a basis for credit in lieu of bonds and stocks, thus replacing rigidity by liquidity and will cause an expansion or contraction as the mercantile community will need the same. The price of money will then become more uniform, shipments of gold will be controlled and the discount market will favorably compare with similar markets in other countries.

The new system will be of incalculable benefit to the shareholders of our banking institutions, because it will insure the safety of their investments. Another benefit will be the amalgamation of our former independent banking units into one harmonious system. These results will prove to be of supreme value to our country. The credit of our great producing forces may then receive the recognition to which they have long been entitled.

Several weaknesses may be mentioned in connection with our former system. One of these was the absence of any central authority to protect the gold reserve of the country. Others were immobilized commercial

paper, decentralized reserves, inelastic note issues, and also the want of any proper discount market where commercial paper can be sold. That system did not give due protection in times of stringency nor in times of successful business progress, which sometimes caused bankers to think that such progress was a peril.

It may not be considered irrelevant to add that every year our country is enriched from the products of our mines which yield about two billion dollars, and by our fisheries and forests, a billion and a half. The products of our farms aggregate eight billion dollars, and our manufacturing establishments add by their processes of manufacture to the value of raw material ten billion dollars more. To this may be added savings of our people which aggregate every year five billion dollars, and which are available for reproductive employment.

Our stock of gold is now the greatest on earth, exceeding by 55 per cent. that of France, by about 100 per cent. that of Russia, and by more than 160 per cent. that of the United Kingdom.

The present business conditions throughout Europe are to be attributed to the South African and Balkan wars, because among other reasons those wars consumed much in the way of current funds and transferred them to investment accounts through the issuance of new bonds. Conditions in the United States are very much more favorable than elsewhere.

History warrants the statement that among the most patriotic citizens of our country have been its bankers, and there is now among bankers of the United States an evident desire to be mutually helpful. A material obstacle to union with our northern neighbor has been the inferiority of our financial legislation. The Federal Reserve Act will presumably result in a better system than that which exists in the Dominion of Canada. If this result obtains it will help to realize a conclusion so that the emblem of the best system of representative government in existence may float over a community ethnologically and linguistically allied. Such a nation would have exceptionable monetary resources. It would possess the aptitude, to a materially greater degree than any other nation, to create the congress of mankind.

REVISED STATUTES OF THE UNITED STATES

TITLE LXII

NATIONAL BANKS

CHAPTER I

Organization and Powers

§ **5133.** [U. S. Comp. Stat. 1901, p. 3454.] Associations for carrying on the business of banking under this title may be formed by any number of natural persons, not less in any case than five. They

shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office.

See Act of February 14, 1880, *post;* Act of July 12, 1882, *post.*

1. The articles of association of a national banking corporation, when approved by the Comptroller, are in the nature of a charter. Thus, where one of the articles of association of a bank organized under the National Banking Act, and approved by the Comptroller of the Currency, provided that its president should hold office for a term fixed, "unless he should become disqualified or sooner removed by a two-thirds vote of the board" of directors. Held, that the right of removal was complete, independent of any by-law on the subject. Taylor *v.* Hutton, 18 Abb. Pr. 16; S. C., 43 Barb. 195.

2. National banks were established for the purpose in part of providing a currency for the whole country, and in part to create a market for the loans of the general government. Tiffany *v.* National Bank of Missouri, 18 Wall. 413, 21 L. ed. 862.

3. Being brought into existence for this purpose by Congress, which is the sole judge of the necessity for their creation, the State can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see fit to permit. Farmers', etc., National Bank *v.* Dearing, 91 U. S. (1 Otto) 29, 23 L. ed. 196.

4. The constitutionality of the "National Banking Act" is unquestioned. It rests on the same principle as the act creating the second bank of the United States. Id.

5. Congress has power to create national banks, and to make any provisions which tend to promote their efficiency, and to protect them, not only against State legislation, but also against suits or proceedings in State courts by which that efficiency would be impaired. Chesapeake Bank *v.* First National Bank, 40 Md. 269, 17 Am. Rep. 601.

6. Congress having legally undertaken to provide a currency for the whole country may secure the benefit of it to the people by appropriate legislation. Veazie Bank *v.* Fenno, 8 Wall. 533, 19 L. ed. 482.

7. All are bound by constructive notice of the statutes regulating national banks. Scott *v.* Deweese, 181 U. S. 218, 45 L. ed. 830, 21 Sup. Ct. Rep. 591.

8. A State legislature may change the day on which a bank shall report its property for assessment and to provide that the lien of the assessment may follow into the hands of a vendee. Bank of Kentucky *v.* Kentucky, 207 U. S. 258.

9. A State cannot enact legislation contravening Federal law as to national banks; but they are deemed citizens of the State of location and Federal courts have jurisdiction only as they have in suits between individual citizens of the same State. State courts may compel the inspection of books to stockholders. Guthrie *v.* Harkness, 199 U. S. 148.

§ 5134. [U. S. Comp. Stat. 1901, p. 3454.] The persons uniting

to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

First. The name assumed by such association, which name shall be subject to the approval of the Comptroller of the Currency.

Second. The place where its operations of discount and deposit are to be carried on, designating the State, Territory or District, and the particular county and city, town or village.

Third. The amount of capital stock and the number of shares into which the same is to be divided.

Fourth. The names and places of residence of the shareholders and the number of shares held by each of them.

Fifth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of this title.

See Act of May 1, 1886, *post*.

1. "The general business of an officer of a national bank is to be transacted at its regular place of business. At the same time we know that in the course of business between banks, occasionally the officers do give instructions away from the place of business of the bank." If the bank doing such business sends a statement of the same to the other bank, and it, through its proper officer, recognizes the validity of the same, it is bound by such recognition. DRUMMOND, J., in Burton *v.* Burley, 12 Chic. Leg. News, 178.

2. A national bank is a citizen of the State where, by law, it is located within the meaning of the constitution. The designation of its place of business in the certificate of organization determines its locality, and it can have no other. In this case, the authorities upon the subject of the citizenship of corporations are collected and discussed. Cooke *v.* State National Bank, 52 N. Y. 96, 11 Am. Rep. 667.

3. A national bank organized and doing business in another State is prohibited by the Revised Statutes of the State of New York from keeping an office of discount or deposit in the State of New York, and cannot maintain an action upon any note discounted by it at such office. National Bank of Fairhaven *v.* The Phœnix W. Company, 6 Hun, 71, 73.

§ **5135.** [U. S. Comp. Stat. 1901, p. 3455.] The organization certificate shall be acknowledged before a judge of some court of record or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, transmitted to the Comptroller of the Currency, who shall record and carefully preserve the same in his office.

§ **5136.** [U. S. Comp. Stat. 1901, p. 3455.] Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization

certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession for the period of twenty years from its organization, unless it is sooner dissolved according to the provisions of its articles of association, or by the act of its shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law.

See Act of July 12, 1882, *post;* Act of April 12, 1902, *post.*

Third. To make contracts.

1. National banks are governed as to contracts, acquisition of property, collection of, and suit for debt, by State laws, except where such laws conflict with Federal laws. McClellan *v.* Chipman, 164 U. S. 357, 41 L. ed. 461, 17 Sup. Ct. Rep. 85.

2. A lease of premises for banking executed before authorization by Comptroller of the Currency to commence business, is void; and nothing can be recovered by lessor of such lease except actual value received by the bank lessee. It cannot be made good by estoppel. McCormick *v.* Market Bank, 165 U. S. 553, 41 L. ed. 817, 17 Sup. Ct. Rep. 433.

3. A national bank having obtained by its officers a loan from another national bank is estopped from repudiating agency of its officer, and cannot claim *ultra vires.* Aldrich *v.* Chemical Nat. Bank, 176 U. S. 636, 44 L. ed. 618, 20 Sup. Ct. Rep. 498.

4. A national bank has no power to enter into a contract guaranteeing the debt of another. Appleton *v.* Citizens Cent. Nat. Bank, 116 App. Div. 404.

5. Where payment of a loan was warranted to a bank by a national bank so that the latter might receive out of the proceeds payment of a debt due from the individual borrower, the bank making the warranty is liable to the amount received by it, although the warranty was *ultra vires.* Appleton *v.* Citizens Cent. Nat. Bank, 190 N. Y. 417.

6. Although a contract made by a corporation may be illegal as *ultra vires*, an implied contract may exist compelling it to account for the benefits actually received. A national bank which guarantees a loan made by another bank in pursuance of an agreement that it be paid the amount due it by the borrower out of the proceeds of the loan, can not avoid its liability for the amount actually received by it pursuant to the arrangement on the ground simply of *ultra vires*, it may be liable for money had and received. 190 N. Y. 416, affirmed. Citizens Central National Bank of New York *v.* Appleton, receiver of the Cooper Exchange Bank, 216 U. S., p. 196.

7. An agreement in writing, or some note or memorandum thereof, subscribed by the party to be charged, is indispensable to the validity of a promise to answer for the debt, default, or miscarriage of another, where the chief object of the promisor is to guarantee the obligation of another, and the promisor derived no direct and substantial benefit therefrom. But where the main purpose of the promisor is to serve his own interest and in consideration of his promise to answer for the debt, default, or miscarriage of another he secures for himself a direct and substantial benefit, his promise becomes his original obligation, which carries with it and sustains

his incidental undertaking to answer for another's debt, and it is valid without writing. Mine and Smelter Supply Co. *v.* Stockgrowers Bank, 173 Fed. Rep. 859.

8. As to a compromise arrangement by a national bank to be relieved of a lease and certain special circumstances. Brown *v.* Schleier, 194 U. S. 18.

9. Where in a transaction between two banks the president of one gave his personal note to the other for discount with a special agreement for a deposit of the proceeds, such agreement, though irregular, may be enforced. A receiver is in no better position than his bank. Rankin *v.* City Nat. Bank, 208 U. S. 541.

10. A national bank has no power to engage in or promote a speculative enterprise or take stock in a corporation organized for such purpose, even though it is taken as protection against a pre-existing indebtedness. Such an enterprise is *ultra vires*, and such defense may be set up by the bank. First Nat. Bank *v.* Converse, 200 U. S. 425.

11. Although restitution of property obtained under a contract which is illegal because *ultra vires*, can not be adjudged by force of the illegal contract, the courts will compel restitution of property of another obtained without authority of law; and, although the contract under which a national bank obtains money from an innocent third party may be *ultra vires* under Revised Statutes, sections 5133–5136, the bank may be required to return the money so received to the party entitled thereto. Citizens' Central National Bank *v.* Appleton, Receiver, 216 U. S. 196. In this case, even if the purchase and carrying on of a mercantile company by a national bank was illegal, the persons dealing with the mercantile company were entitled to receive the money paid into the bank for their account. Rankin *v.* Emigh, 218 U. S. 27.

12. Where a national bank, in order to induce complainant to purchase certain steamship stocks owned by it, agreed to take complainant's note for $50,000 for the stock and hold the stock as collateral security, and to guarantee plaintiff against any loss in the transaction from the execution and delivery of the note, such guaranty was not an ordinary commercial guaranty, but one outside the ordinary business of banking and *ultra vires*. Barron *v.* McKinnon, 179 Fed. Rep. 759.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other officers, define their duties, require bonds of them, and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

1. It is not necessary that the directors of a national bank shall signify their acceptance of the official bonds of their cashier, by entering a memorandum to that effect in their journal or minute book. The retention of the bond by the directory, after being submitted for approval, and the entering upon and continuation in office of the cashier, create a presumption of acceptance, which may also be proved by oral evidence. Graves *v.* Lebanon National Bank, 10 Bush (Ky.), 23, 19 Am. Rep. 50, 12 Wheat. 64, 6 L. ed. 52.

2. Where the directors of a national bank published a statement of the condition of the bank, showing that its affairs were being prudently and honestly administered,

by reason of which statement persons subsequently became sureties for the cashier on his bond, he having, previously to the publication of the statement, given none, but at the time was guilty of fraud and embezzlement of the funds of the bank, Held, in an action to enforce the liability of the sureties, for embezzlements by the cashier subsequent to the execution of the bond, that they (sureties) had a right to believe that the directors, before publishing the statement, made some investigation of the condition of the bank, and being misled and deceived by the misrepresentations of the statement, were released. Id.

3. A surety upon the bond of a cashier of a bank is not discharged by the mere fact that the cashier was, at the time the bond was given, a defaulter. Nor will the neglect of the bank to ascertain that fact discharge him. The books of the bank, and the statements of the bank sent to the Comptroller of the Currency, under the National Banking Law, are not admissible in evidence to prove the negligence of the bank officers, nor as tending to establish the fact of knowledge on the part of the bank of the existence of the defalcation. Tapley *v.* Martin, 116 Mass. 275; Wayne *v.* Commonwealth National Bank, 52 Penn. St. 343; Atlas Bank *v.* Brownell, 9 R. I. 168, 11 Am. Rep. 231. But see Graves *v.* Lebanon Nat. Bank, 10 Bush (Ky.), 22, 19 Am. Rep. 50, where it was held that sureties on the bond of a cashier are released by the negligence of the directors.

4. A "solicitor of business" is not included within the terms "and other officers." But such solicitor may be employed under subdivisions 3 and 7. Case *v.* First Nat. Bank of Brooklyn, 59 Misc. 269.

5. Where the contract of a bank president to serve in such capacity was terminated by no act of the bank, but by its suspension, which disabled both the bank and the president from continuing its affairs, the president's salary ceased when the bank went out of business, and he ceased to preside without any liability of the bank for an unexpired term of the contract. Elliott *v.* Peet, 192 Fed. Rep. 698.

6. A resolution of the directors, authorizing the president of a bank to draw checks and drafts, containing no limitation on its face, Held to justify the payment by a depository of funds of the bank of a check drawn by such president against such deposit. First National Bank of Mt. Vernon, Wash., *v.* National Park Bank, 175 Fed. Rep. 881.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

1. It is not necessary that any by-laws should be adopted before a president may be chosen, or removed, or another appointed in his place. Taylor *v.* Hutton, 43 Abb. Pr. 195.

2. A national bank, organized under and controlled by the act of 1864, cannot acquire a valid lien upon the shares of its stockholders by the articles of association or by-laws. Bullard *v.* Bank, 18 Wall. 597, 21 L. ed. 927, citing Bank *v.* Lanier, 11 Wall. 369, 20 L. ed. 172. And speaking of the latter case the court (in Bullard *v.* Bank), said: "This court held that after the passage of the latter act (1864), a by-law giving a lien upon a debtor's stock was inconsistent with its provisions and invalid."

Of course if the act destroyed an existing by-law, it must prevent the adoption of a new one to the same effect. See also Johnson *v.* Laflin, 103 U. S. 803, 26 L. ed. 534. The cases cited in this note overruled Young *v.* Vough, 23 N. J. Eq. 325.

3. Whatever power the directors of a national bank possess to regulate transfers of its stock, they derive not from section 5133, or the articles of association, but from this section 5136 and section 5139 by express and direct grant. Bullard *v.* Bank, see above.

Seventh. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing and circulating notes according to the provisions of this title.

But no association shall transact any business except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the Comptroller of the Currency to commence the business of banking. See sections 5168, 5169, *post.*

1. Under this section (subd. 7) national banks may, for the purpose of securing an indebtedness to themselves, hand over, with an indorsement and guaranty, promissory notes, drawn payable to maker, and indorsed by him to third parties. People's Bank *v.* National Bank, 101 U. S. 181, 25 L. ed. 907.

2. It was held in National Bank *v.* Matthews, 98 U. S. 621, 25 L. ed. 188, that the clauses contained in this and section 5137, prohibiting loans by national banks on real estate security, will not vitiate such securities when taken by these banks. That a disregard of the prohibition only lays the association open to proceedings by the Government for a judgment of ouster and dissolution.

3. As to the liability of the directors, see section 5239, *post.*

4. A national bank has power to lend money upon the notes, or other personal obligations of the borrower, secured by a pledge of stock of a corporation as collateral security. Shoemaker *v.* National Mechanics' Bank, 2 Abb. (U. S.) 416, Fed. Cas. No. 12,801.

5. This subdivision contains five distinct grants of power, and no one grant is a limitation upon any other. Id.

6. The enumeration in this section (subd. 7) of the powers which may be exercised by a national bank is not of the incidental, but of the principal powers, and to them are superadded all incidental powers, of which the power of receiving special deposits is one. Pattison *v.* Syracuse National Bank, 80 N. Y. 82, 36 Am. Rep. 582, and cases cited.

7. National banks, therefore, have power to receive special deposits, gratuitously or otherwise, and when received gratuitously, they are liable for their loss by gross negligence only. Id.; First National Bank *v.* Rex, 89 Penn. 308, 33 Am. Rep. 767.

8. The term "special deposits" includes money, securities and other valuables

delivered to banks, to be specifically kept and redelivered; it is not confined to securities held by the banks as collateral to loans. Id.; National Bank *v.* Graham, 100 U. S. 699, 25 L. ed. 750. But see (*contra*) Wiley *v.* First National Bank, 47 Vt. 546, 19 Am. Rep. 122; First National Bank of Lyons *v.* Ocean National Bank, 60 N. Y. 278, 19 Am. Rep. 181; Weckler *v.* First National Bank of Hoglestown, 42 Md. 581, 20 Am. Rep. 95. See also section 5228 and note.

9. A deposit is general, unless the depositor makes it special, or deposits expressly in some particular capacity. Braham *et al.* *v.* Adkins, 77 Ill. 263.

10. Under this section, a bank having coin in pledge may sell its special property, in which case the assignee will acquire the legal right of the assignor. Merchants' National Bank *v.* State National Bank, 10 Wall. 604, 19 L. ed. 1008.

11. National banks have the power to certify checks, and this power may be exercised by the cashier without any special authorization. The directors can limit this power, but such limitatiou will be no defense as to parties having no notice. Id. See also section 5208, U. S. Comp. Stat., p. 3496, and Act of Congress, approved July 12, 1882.

12. A national bank is not authorized by its charter to act as a broker or agent in the purchase or sale of bonds and stocks. Bank of Allentown *v.* Hoch, 89 Penn. 327, 33 Am. Rep. 769, citing 2 Otto, 122, 23 L. ed. 679, note 15 below; 22 P. F. Smith, 462, 13 Am. Rep. 699. See also Weckler *v.* First National Bank, 42 Md. 593, 20 Am. Rep. 95, and compare Yerkes *v.* National Bank (note 14 below).

13. It was held in the First National Bank of North Bennington *v.* The Town of Bennington, 16 Blatch. 53, Fed. Cas. No. 4,807, that interest coupons from bonds issued by the defendant, in aid of a railroad company, were promissory notes within the statute 3 and 4 Anne, chapter 9, and of this section.

14. National banks can properly deal in government securities, and an agreement by one with a customer to exchange for the latter, for sufficient consideration, nonregistered for registered United States bonds, is binding on the bank; and where it neglects to fulfil the agreement, and is robbed meantime and the bonds stolen, it will be held liable for the damages thereby occasioned the owner. Yerkes *v.* National Bank, 69 N. Y. 382, 25 Am. Rep. 208; Van Leuven *v.* The First National Bank, 54 N. Y. 671. But as to first proposition see following note.

15. A national bank organized under the National Banking Act may, in a fair and *bona fide* compromise of a contested claim against it, growing out of a legitimate banking transaction, pay a larger sum than would have been exacted in satisfaction of the demand, so as to obtain a transfer of certain stocks in railroad and other corporations; it being honestly believed, at the time, that by turning the stocks into money, under more favorable circumstances than then existed, a loss which would otherwise accrue from the transaction might be averted or diminished. Such a transaction would not amount to a dealing in stocks. First National Bank *v.* National Exchange Bank, 92 U. S. (2 Otto) 128, 23 L. ed. 682, citing Fleckner *v.* U. S. Bank, 8 Wheat. 351, 5 L. ed. 634. Note 20 below.

16. Compromises to avoid or reduce losses arising in the course of a legitimate banking business, come within the general scope of the powers committed to the board of directors and the officers and agents of the bank, and are submitted to their judgment and discretion, except to the extent that they are restrained by the charter or by-laws. Banks may do in this behalf, whatever natural persons could do under like circumstances. Id.

17. In an action at law, the fact was found that the note in question was a purchase,

and not a discount, or the lending of money on the credit of it. Held, that a national bank has no right to traffic in promissory notes as a species of personal property, or to acquire any title to such paper by a purchase, made admittedly not in the way of discount or by lending money on it. The word "negotiating" gives no implied authority to speculate or traffic in paper of the character of the note in question, or in financial securities of any description. First National Bank of Rochester *v.* Pierson, 24 Minn. 140, 31 Am. Rep. 341; Farmers and Mechanics' Bank *v.* Baldwin, 23 Minn. 198, 23 Am. Rep. 683. But see note 21 below.

18. A national banking association has the right to purchase commercial paper in the market in the usual course of business, and if there be any fraud in the making of such notes, it must be brought to the knowledge of the bank in order to bind it. Atlas National Bank *v.* Savery, 127 Mass. 75; to same effect see Smith *v.* Exchange Bank, 26 Ohio St. 141. But see note 21 below.

19. A bank having power under its organic act to discount negotiable notes has also power to purchase such notes. Pape *v.* Capitol Bank, 20 Kan. 440, 27 Am. Rep. 183. But see note 21 below.

20. The prohibition against dealing in stocks, etc., is implied from the failure to grant the power (First National Bank *v.* National Exchange Bank, note 15 above), but a prohibition against trading and dealing is nothing more than a prohibition against engaging in the ordinary business of buying and selling for profit, and does not include purchases resulting from ordinary banking transactions. Hence, the acceptance by a national bank of an indorsed note in payment of a debt due was held not to be a "dealing" in notes. Fleckner *v.* U. S. Bank, 8 Wheat. 351, 5 L. ed. 634.

21. Whether the purchase of a promissory note by a national bank for purely speculative purposes comes within the provisions of this section, or is *ultra vires*, is a question upon which the decisions are in conflict. That such purchase is *ultra vires*, see First National Bank *v.* Pierson, 16 Alb. L. J. 319; S. C. 24 Minn. 140, 31 Am. Rep. 341; Farmers and Mechanics' Bank *v.* Baldwin, 23 Minn. 198, 23 Am. Rep. 683. That such purchase is valid, see Smith *v.* Exchange Bank, 26 Ohio St. 141; Pape *v.* Capitol Bank of Topeka, 20 Kan. 440, 27 Am. Rep. 183; Atlas National Bank *v.* Savery, 127 Mass. 75.

22. A national bank may hold collateral for the performance of contracts between third parties, and it will be estopped to say that such act was *ultra vires*. Bushnell *v.* Chautauqua County National Bank, 10 Hun, 378.

23. Granting of power to national banks to discount and negotiate promissory notes and other evidences of indebtedness gives express authority to buy the checks of individuals drawn upon other banks, whether payable to bearer or to order. First National Bank *v.* Harris, 108 Mass. 514.

24. A national bank is not prohibited from loaning money on the shares of another national bank, causing the shares so taken as pledge or collateral security to be transferred to it (or one of its officers). And if it were, it could not set up its own illegal act to escape the responsibility existing therefrom. National Bank *v.* Case, 99 U. S. 628, 25 L. ed. 448.

25. The placing by one bank of its funds on permanent deposit with another bank is a loan within the spirit of this section. Bank *v.* Lanier, 11 Wall. 369.

26. A chattel mortgage taken by a national bank to secure a pre-existing debt is valid, and will be enforced. Spofford *v.* First National Bank, 37 Iowa, 181, 18 Am. Rep. 6.

27. An indorsement of a promissory note by a married woman, whereby she

charges her separate and personal estate with the payment of the note, is to be treated as personal security within the meaning of the National Banking Act. Such indorsement is not a mortgage in any sense. Third National Bank *v.* Blake, 73 N. Y. 260.

28. Shareholders have no standing in court to interfere for the protection of their company, until the board of directors has neglected or refused to take the proper steps to protect the interests of the company. Fifth National Bank *v.* Pittsburgh, etc., R. R. Co., 1 Fed. Rep. 190.

29. A., the president of a national bank, asked a banking corporation, B., for a loan of $50,000 on his railroad, which loan had been previously refused by A.'s bank. B. agreed to deposit this amount in A.'s bank to draw interest at six per cent. A.'s bank failed and its receiver rejected B.'s claim. Held, that such agreement was binding on A.'s bank when ratified by the majority of the directors, and B. was entitled to share ratably with the creditors of A.'s bank. Eastern Township Bank *v.* National Bank, 22 Fed. Rep. 186, 22 Blatchf. 498.

30. Where officers of a national bank, for the purpose of averting insolvency, agree to keep out of the general assets of the bank a certain deposit if the depositor will allow the bank to use his money, the fund will be considered a pledge and the agreement valid. Roberts *v.* Hill, 23 Fed. Rep. 311, 123 Blatchf. 191.

31. Borrowing is a legitimate function of a national bank in a temporary sense within the business of banking. And, under § 5136 directors may empower president or other officer to indorse bank paper. Auten *v.* U. S. Bank, 174 U. S. 141, 43 L. ed. 926, 19 Sup. Ct. Rep. 628.

32. A national bank cashier giving an indemnity bond company a certificate that the president had fully performed his duty, and the indemnity company acting on the faith of certificate, renewed the president's bond, the certificate binds the bank. Certain acts of president construed. Fidelity Co. *v.* Courtney, 186 U. S. 350, 46 L. ed 1198, 22 Sup. Ct. Rep. 833.

33. National bank acting beyond its power as agent for third person is liable as for conversion. National Bank *v.* Anderson, 172 U. S. 576, 43 L. ed. 559, 19 Sup. Ct. Rep. 294.

34. A national bank has no power to deal in stocks, although it may in good faith take stock of other corporations for a precedent debt. It has no power to invest in surplus funds of other national banks. Concord Bank *v.* Hawkins, 174 U. S. 367, 43 L. ed. 1009, 19 Sup. Ct. Rep. 765.

35. The fact that directors of a national bank have joined in the wrongdoing of its cashier in misuse of the bank's funds, will not make the transaction valid as against the bank, and will not invalidate the official bond of cashier. Rankin *v.* Bush, 108 App. Div. 295.

36. When a bank refuses to do the particular thing requested with securities delivered to it for that purpose only, it is its duty to return the securities and no general lien in its favor attaches to them. Hanover National Bank of New York *v.* Suddath, Receiver of the American National Bank of Abilene, 215 U. S. R. 110.

37. In the absence of any express or implied contract that a bank to which collections are sent would not be liable for the misconduct of its subagents in making the collection, it is responsible for the negligence of those so employed. California National Bank of Sacramento *v.* Utah National Bank of Salt Lake City, 190 Fed. Rep. 318.

38. The ordinary duty of a bank receiving a note for collection extends no further

than to make proper demand of payment, and sometimes in case of nonpayment to take such further action as necessary to secure and preserve the liability of all parties, by protest and notice as may be required by the law of its State. Carpenter *v.* National Shawmut Bank, 187 Fed. Rep. 1.

39. A bank in which a draft was deposited for collection *held* an independent contractor and responsible for the negligence of defendant's correspondent to whom the draft was sent in process of collection. Smith *v.* National Bank of D. O. Mills & Co., 191 Fed. Rep. 226.

40. Where a check was offered and received by the drawee bank as a deposit, credited to the depositor's account, and charged to the account of the drawer, the transaction constituted complete payment of the check and could not be rescinded except for fraud or mutual mistake. American National Bank of Nashville *v.* Miller, 185 Fed. Rep. 338.

41. Where the bank pays a check to the holder, who has taken it in good faith and for value, and charges up the check to the makers, such payment can not be rescinded by the maker without the consent of the person to whom payment was made. Albers *v.* Commercial Bank, 85 Mo. 173.

42. A draft, improperly drawn by plaintiff's president, and written on a blank of the payee bank, and dated at a place other than that where plaintiff did business, *held* insufficient to put defendant on inquiry. First Nat. Bank of Mount Vernon, Wash., *v.* National Park Bank, 192 Fed. Rep. 546.

43. Where defendant, after depositing a check in the bank of which he was president, acquiesced in the bank's retention thereof, and the check would not have been paid, if forwarded sooner, because the maker had not sufficient funds in the bank on which it was drawn to meet it, it was no defense to the defendant's liability on the check, after it had been forwarded and protested, that it was not forwarded in time. Elliott *v.* Peet, 192 Fed. Rep. 698.

44. It is a defense to a note in the hands of a national bank's receiver that it was given in good faith to the bank solely for its accommodation, and on agreement that the bank would provide for its payment, and never call upon the defendant maker to pay it. Peterson *v.* Tillinghast, 192 Fed. Rep. 287.

45. In an action on a note executed to a bank, evidence held to require a finding that the note was for the benefit of the maker, and not for the accommodation of the bank. Niedner *v.* Thomson, 186 Fed. Rep. 607.

46. A national bank desired to increase its capital stock, and, having failed to sell the entire issue, which was necessary before it could do business on the increased capital, in accordance with an agreement between the officers, a third person gave his note for the price of the remaining shares of one of the directors who indorsed and delivered the same to the bank, the shares being issued in his name. The maker having become insolvent, the defendant was induced by such director to execute his accommodation note to the director's uncle, who indorsed it, and it was substituted for that of the first maker. The notes were carried and reported as assets of the bank until its failure; but neither maker paid any interest, the dividends on the stock being applied thereon. The cashier gave defendant a letter assuring him that he would not be held liable on his note. Held, in an action by the receiver on a renewal of defendant's note, that such note was collectible, if given for the accommodation of the director and his associates, and not of the bank, and that such question was one of fact for the jury, under the evidence. Lyons *v.* Westwater, 181 Fed. Rep. 681.

47. A purchaser of drafts, drawn by a shipper, payable to itself, and bills of lading,

consigning to itself goods against which the drafts were drawn, and which goods the shipper had agreed to sell to a third person, acquires the title of the shipper with the power of *jus disponendi* of the shipper, and it may divert and sell the goods, and the third person may not complain thereof. First National Bank of Cincinnati *v.* Felker, 185 Fed. Rep. 678.

48. Under some circumstances a pledgee of collateral may be required to produce it as a condition to enforcing the obligation for which it is security, but not where it has been disposed of in good faith and in a lawful manner in the effort to realize all that was possible out of it, in which case the pledgee is liable only to account for the amount received. If the disposition was unauthorized or improvident, his liability is only for the value of the collateral, and does not affect his right to recover on the obligation of the pledgor to the extent that it exceeds such value. Warburton *v.* Trust Company of America, 182 Fed. Rep. 769.

49. Section 239 of the Criminal Code, which prohibits the collection of the purchase price of intoxicating liquors by a person acting in connection with the transportation thereof from one State into another, does not apply to banks, collecting drafts with bill of lading attached, where the shipment is made to a real consignee upon an order sent by him and filled by shipment from the dealer's place of business.

Where consignments of liquor are made to fictitious persons and the bills of lading, with drafts attached, are sent to a bank with such instructions that the goods are delivered to anybody who will pay the draft and accept the goods, even though the person to whom the goods are delivered has not previously ordered the liquor, such a transaction would constitute a sale by the bank and the bank in such a case would be amenable to discipline by the State for selling liquor contrary to the State law, and also to discipline by the Federal authorities for selling liquor without compliance with the provisions of the internal-revenue laws.

Such a business, moreover, is clearly beyond the powers of a national bank, and if the Secretary of the Treasury is satisfied that there is any considerable amount of dealing of that character by banks, he might well issue a general warning to them against engaging in such *ulta vires* transactions. Opin. U. S. Atty. Gen'l, May 3, 1911.

§ 5137. [U. S. Comp. Stat. 1901, p. 3456.] A national banking association may purchase, hold and convey real estate for the following purposes and for no others:

First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

1. Notwithstanding this prohibition, a mortgage taken by a national bank, as security for future advances, will be held valid. Whatever objection there may be to it from the prohibitory provisions of the statute, the objection can only be urged by the government. Fleckner *v.* United States Bank, 8 Wheat. 338–355, 5 L. ed. 631–635; National Bank *v.* Whitney, 103 U. S. 99, 26 L. ed. 443. And in Union Bank *v.* Mathews, 98 U. S. 628, 25 L. ed. 190, the court recognized the doctrine that "where a corporation is incompetent by its charter to take title to real estate, a con-

veyance to it is not void but only voidable, and the sovereign alone can object. It is void unless assailed in a direct proceeding for that purpose."

2. A national bank may enforce a mortgage on real estate taken by its collateral security for payment of an indebtedness of the mortgagee to the bank, existing at the time of the execution of the mortgage. National Bank *v.* Whitney, 103 U. S. 99, 26 L. ed. 443. Approved 93 N. Y. 93.

3. In Orim *v.* Merchants' National Bank, 16 Kans. 341, the defendant took a lien upon real estate to secure a pre-existing debt. Subsequently it paid $500 to discharge a prior lien upon the same property, taking a note and mortgage on land in Kansas to secure the latter payment. Held, that the taking of the last-mentioned mortgage was not a violation of this section.

4. A national bank may sell its real estate on terms of credit, and receive a mortgage to secure the price. N. O. National Bank *v.* Raymond, 29 La. Ann. 359, 29 Am. Rep. 335. And see remaining notes to this section below.

5. When a national bank has loaned on the mortgage of timber land, it may on foreclosure purchase same and cut and sell the timber. Roebling's Co. *v.* National Bank, 30 Fed. Rep. 744.

6. Where a national bank purchases, at a foreclosure sale of real estate mortgaged to it, other property besides that mortgaged to it, such purchase does not invalidate the purchase of the mortgaged property which the above section authorizes it to acquire. Reynolds *v.* National Bank, 112 U. S. 405, 28 L. ed. 733, 5 Sup. Ct. Rep. 213.

7. A national bank may loan on the security of a mortgage if not objected to by the United States. Fortier *v.* National Bank, 112 U. S. 439, 28 L. ed. 764, 5 Sup. Ct. Rep. 234; affirming National Bank *v.* Mathews, 98 U. S. 621, 25 L. ed. 188, and National Bank *v.* Whitney, 103 U. S. 99, 26 L. ed. 443.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

A national bank is not restricted in the purchase of real estate to secure a debt to the exact amount owing it, but is entitled to purchase such real estate as may be necessary in order to secure the debts due it, so long as the security of such debts is the real object of the purchase. Upton *v.* Nat. Bank of South Reading, 120 Mass. 153. In this case, a national bank advanced money to a person already indebted to it, and took a mortgage on real property to secure both the advance and prior indebtedness. Held, that the transaction was valid under this section.

Fourth. Such as it shall purchase at sales under judgment, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years.

1. Although a bank or its trustees in liquidation, on the expiration of its charter, may be deprived of the power to take or hold real estate, this will not prevent either of them from having such property, on which they have a lien for a debt due the bank,

placed in a situation where the money can be realized. And if in doing this they are compelled, for their own protection, to buy off other incumbrances, so that, when sold and converted into money, all of it should be paid to them, no principle of law or justice is violated. The charter of a bank being about to expire and its affairs passing into the hands of trustees in liquidation, it may cause real estate on which it has a lien (there being prior incumbrances) to be purchased by a person as agent of the bank, it supplying the money and he giving his note therefor, and subsequently transferring the property, with power of sale, to one of the trustees in liquidation (the charter having expired in the interim) to hold in trust as security for the payment of the note, and in case of sale for the last-mentioned purpose to pay any residue he as agent might direct, which he subsequently ordered should be paid to the trustees in liquidation. By this means the bank gets rid of prior incumbrances, and the note being (properly) left unpaid, it gets the entire proceeds of sale (less expenses), without either it or its trustees ever having had the legal title or the power of sale, or the right to control the time or the terms of the sale. Zautzingers *v.* Gunton, 19 Wall. 32, 22 L. ed. 96.

2. In National Bank *v.* Mathews, 98 U. S. (8 Otto) 621, 25 L. ed. 188, the defendant and another executed their joint note to B., and to secure the payment thereof, the former executed a deed of trust on lands, which was in effect a mortgage with power of sale thereto annexed. Thereafter the plaintiff, on the security of the note and deed, loaned money to B., who thereupon assigned them to the plaintiff. The note not being paid at maturity, plaintiff directed the trustee named in the deed of trust to sell, who was proceeding to do so when the defendant filed a bill to enjoin the sale upon the grounds that, by virtue of the provisions of sections 5136 and 5137, the deed did not inure as a security to plaintiff for its loan. Held (Mr. Justice Miller dissenting), that the plaintiff bank was entitled to enforce the collection of the note by a sale of the lands.

3. In the First National Bank of Ft. Dodge *v.* Haire, 36 Iowa, 443, the bank refused to discount a note for a firm, but did make the loan upon a note made by one member of the firm to the other, and indorsed by the latter to the bank, the maker giving a bond and mortgage upon sufficient real estate to secure the indorser against liability upon his indorsement, with a stipulation that, in case of default in due payment of the note, the security should inure to the bank. Default being made, the bank filed a bill to foreclose, and the defense was set up that the bond and mortgage were within the prohibition contained in this section, and, therefore, did not inure as security to the bank. Held, that they were not within the prohibition, but were legal and binding and could be enforced for the benefit of the bank. In disposing of this point, the court said: "Every loan or discount by a bank is made in good faith, in reliance by way of security upon the real or personal property of the obligors, and unless the title by mortgage or conveyance is taken to the bank directly, for its use, the case is not within the prohibition of the statute. The fact that the title or security may inure indirectly to the security and benefit of the bank will not vitiate the transaction." See Silver Lake Bank *v.* North, 4 Js. C. R. 370.

4. A national bank has power to covenant to pay a debt which is a lien on land acquired by it. Mutual Life Ins. Co. *v.* Yates Co. National Bank, 35 App. Div. 218, 54 N. Y. Supp. 743.

5. A national bank, while it has no power to lend on real estate mortgages, yet the bank may lawfully hold or enforce a real estate bond and mortgage, subject to liability to be called to account by the Government. Slade *v.* Squier, 133 App. Div. 666.

§ **5138.** [U. S. Comp. Stat. 1901, p. 3461.] No association shall be organized with a less capital than one hundred thousand dollars, except that banks with a capital of not less than fifty thousand dollars may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants, and except that banks with a capital of not less than twenty-five thousand dollars may, with the sanction of the Secretary of the Treasury, be organized in any place the population of which does not exceed three thousand inhabitants. No association shall be organized in a city the population of which exceeds fifty thousand persons with a capital of less than two hundred thousand dollars.

Amended 1900, see Act of March 14, 1900, *post*.

The word "place," as used in section 5138 of the Revised Statutes, relating to the capitalization of national banks, means a corporate or quasi-corporate body organized for the purpose of local government in a defined territory. Opin. U. S. Atty. Gen'l, June 6, 1913.

§ **5139.** [U. S. Comp. Stat. 1901, p. 3461.] The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.

See notes to section 5151, and note 3, subdivision 6, of section 5136.

1. National bank shares are saleable and transferable at the will of the owner. They are in this respect like other personal property, though the statute authorizes every association to prescribe the manner of their transfer. Johnston *v.* Laflin, 103 U. S. 803, 26 L. ed. 534; Bullard *v.* Bank, 18 Wall. 597, 21 L. ed. 926; Bank *v.* Lanier, 11 Wall. 369, 20 L. ed. 172.

2. The power of a national bank to regulate transfer of its stock can only go to the extent of prescribing conditions essential to the protection of the association against fraudulent transfers, or such as may be designated to evade the just responsibility of the stockholder. It is to be exercised reasonably, and cannot be used to clog the manner of transfer with useless restrictions, such as making it dependent on the consent of the directors or other stockholders. Johnston *v.* Laflin, 103 U. S. 803, 26 L. ed. 534.

3. The entry of the transaction on the books of the bank, when stock is sold, is not required for the translation of the title, but for the protection of the parties and

others dealing with the bank, and to enable it to know who are its stockholders entitled to vote and receive dividends. It is necessary to protect the seller against subsequent liability as a stockholder, and perhaps also to protect the purchaser against proceedings of the seller's creditor. Id.

4. As between the parties to a sale it is enough that the certificate is delivered with authority to the purchaser, or any one he may name, to transfer it on the books of the company, and the price paid. If a subsequent transfer of a certificate be refused by the bank, it can be compelled at the instance of either of them. Id.

5. A bank having wrongfully refused to permit the shares of a stockholder to be transferred upon its books, is liable for the value of the shares. Seeley *v.* New York National Exchange Bank, 4 Abb. N. C. 61.

6. One Stevens bought shares in a national bank and caused them to be transferred to one Elston, who was irresponsible and in the employ of S.'s broker. S. remaining the real owner and having a power of attorney to act as E.'s agent, he, S., subsequently purchasing more of the same stock and selling from the same account, *i. e.*, in E.'s name. At the time of the first transfer there was no suspicion of the insolvency of the bank, and its credit remained good for more than a year afterward. Held, upon failure of the bank, that both Stevens and Elston were liable as stockholders; the former as being the real owner, and the latter for assenting to the transfer to him on the books. Davis *v.* Stevens (WAITE, C. J.), 17 Blatchf. 259, Fed. Cas. No. 3,653. And see also Bowden *v.* Johnson, 107 U. S. 251, 27 L. ed. 386, 2 Sup. Ct. Rep. 246.

7. A fraudulent transfer of the shares held by the shareholder, in order to avoid liability for the debts of the corporation, leaves such shareholder still liable. Marcy *v.* Clark, 17 Mass. 330; Bowden *v.* Santos, 1 Hughes, 158, Fed. Cas. No. 1,716.

8. An arrangement by which the stock is nominally paid, and the money immediately taken back as a loan to the stockholder, is a device to change the debt from a stock debt to a loan, and is not a valid payment against creditors of the corporation, though it may be good as between the company and the shareholder. The capital stock or shares of a corporation constitute a trust fund for the benefit of the general creditors of the corporation, which cannot be defeated by a simulated payment of the stock subscription, or by any device short of actual payment in good faith. Sawyer *v.* Hoag, 17 Wall. 610, 21 L. ed. 731.

9. As to the liability of a transferee of shares, it was held in National Bank *v.* Case, 99 U. S. 628, 25 L. ed. 448, that a party who, by way of pledge or collateral security for a loan, accepts stock of a national bank which he causes to be transferred to himself on its books, incurs immediate liability as a stockholder, and he cannot relieve himself therefrom by making a colorable transfer of the stock with the understanding that at his request it shall be re-transferred. See also Pullman *v.* Uptown, 96 U. S. 328, 24 L. ed. 818; Alderly *v.* Storm, 6 Hill, 624; Hale *v.* Walker, 31 Iowa, 344, 7 Am. Rep. 137.

10. In the absence of fraud, a mere pledgee of stock in a national bank is not liable to its creditors, where he is not registered as owner, and this where he takes the security for his benefit in the name of an irresponsible trustee, for the avowed purpose of avoiding individual liability. Anderson, Receiver, *v.* Philadelphia Warehouse Co., 111 U. S. (3 Davis) 479, 28 L. ed. 478, 4 Sup. Ct. Rep. 525.

11. Where the certificates of stock in a national bank declare that stock is transferable on the books of the bank in person or by attorney, on surrender of the certificates and not otherwise, and which, notwithstanding, suffers a holder to transfer

on the books his stock without such surrender, is liable to a *bona fide* transferee for value of the same stock, who produces such certificates with power of attorney to transfer, and it makes no difference that the bank has not been given notice of the transfer. Bank *v.* Lanier, 11 Wall. 369, 20 L. ed. 172.

12. Persons holding national bank stock as trustees, etc., to relieve themselves from liability as individual stockholders, must cause it to appear on the books that they hold as such trustees. Creditors have a right to know who have pledged their personal liability, and if a trustee fails to disclose his trusteeship, he is guilty of laches for which others should not suffer. Davis *v.* Essex Baptist Society, 44 Conn. 582, Fed. Cas. No. 3,633. This case, although cited in a State report, was decided in the United States District Court for the district of Connecticut. SHIPMAN, J.

13. When the charter of a corporation provides that the stock should be transferred in such manner as the board of directors may prescribe, and the board enact a by-law that the stock shall be transferred only on the books of the company, and that in each certificate issued must be "transferable only on the books of the company subject to the by-laws of the company," a creditor of a person in whose name stock stands on the books of the company, who causes an execution to be levied on such stock, will hold the same as against one who has assignment of the stock certificates, but not a transfer on the books. People's Bank *v.* Gridley, 1 Mo. Jur. 589.

14. A person is presumed to be the owner of stock when his name appears on the books of a company as a stockholder; and when sued as such, the burden of disproving that presumption is cast upon him. Turnbull *v.* Payson, 5 Otto, 418, 24 L. ed. 437.

15. The signing of a transfer in blank on a certificate of stock is a warranty of the genuineness of the certificate. Matthews *v.* Massachusetts National Bank, 1 Holmes, 396, Fed. Cas. No. 9,286.

16. Whatever rights the purchaser of a certificate of stock may acquire as between himself and his vendor, it is well settled, as between himself and the corporation, he acquires only an equitable title; and until he secures a transfer on the books of the company he is not a stockholder, and has no claim to act as such. N. Y. and N. H. R. R. Co. *v.* Schuyler, 34 N. Y. 80; Grymes *v.* Hone, 49 id. 17, 10 Am. Rep. 313.

17. "As between a corporator and the corporation, the records of the corporation, or its stock-book, as it is called, is the evidence of their relation. Meetings of the stockholders, elections and dividends, etc., are regulated by this record. The certificate is but secondary evidence, and is never demanded except when the stockholder deals with the corporation in a contract relation." Bank of Commerce's Appeal, 73 Penn. St. 59.

18. In Johnston *v.* Laflin, 17 Alb. L. J. 146, Fed. Cas. No. 7,393, affirmed 103 U. S. 803, 26 L. ed. 534 (see note 1 above), the United States Circuit Court said of a sale by transfer of the stock of a bank, "that the transaction between Laflin and Britton was complete without registration of the transfer, and that it is equally complete as to the bank, unless the bank had some valid reason for refusing to register the transfer."

19. While it may be that a national bank would not be bound to admit a purchaser of shares of its stock "to all the rights, etc., of the prior holders of such shares," unless the transfer to him was made on the books of the association in such manner as may have been prescribed in the by-laws of articles of association, nevertheless, when the association does issue certificates of shares or stock to a subsequent purchaser

in lieu of the certificate of the prior owner, without observing its by-laws in regard to transferring stock on its books, certainly, so far as its creditors are concerned, a party holding such stock will be subject to the liabilities imposed by section 5151, U. S. Comp. Stat. 1901, p. 3465. Laing *v.* Burley, 101 Ill. 591; Wheelock *v.* Kost, 77 Ill. 296.

A party having dealt with the cashier of a national bank individually, and loaned him money for his private use, and received from him as security therefor a certificate of stock in the bank, in the party's own name, which stated that shares were transferable on the books of the bank, and on surrender of former certificates (the cashier appearing at the time on said books as the owner of a larger number of shares than that mentioned in said certificate, and the party, accepting such certificate, as a transfer of shares of which the cashier represented himself as owner), and no certificate having been surrendered by the cashier or party so dealing with him, the bank not having ratified or received any benefit from the transfer, such party cannot, the said certificate being worthless by reason of the cashier as matter of fact owning no stock at the time it was issued by him (and he being insolvent), recover its value from the bank. Moore *v.* Citizens' National Bank, 111 U. S. (3 Davis) 156, 28 L. ed. 385, 4 Sup. Ct. Rep. 345. In this case the court cited Merchants' Bank *v.* State Bank (10 Wall. 604, 644), 19 L. ed. 1008, 1018, in which case the general doctrine was stated to be that "where a party deals with a corporation in good faith—the transaction is not *ultra vires*—and he is unaware of any defect of authority or other irregularity on the part of those acting on the part of the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract although such defect or irregularity exists."

20. Where a shareholder in a national bank sells his stock in good faith, indorses the certificate and surrenders it to the cashier with full notice of the sale, and instructs the cashier to transfer the stock on the books of the bank, he does all that is incumbent on him and is discharged from further liability as a shareholder. It makes no difference whether the instructions to the cashier are oral or in writing, or that the cashier fails to actually transfer the stock on the books. Hayes *v.* Shoemaker, 39 Fed. Rep. 319 (following Whitney *v.* Butler, 118 U. S. 655, 30 L. ed. 266, 7 Sup. Ct. Rep. 61).

21. The owner of a paid subscription to the stock of a corporation is the full beneficial owner of the stock, a certificate of stock being merely evidence of ownership; and, during the time in which a company fails or refuses to issue a certificate to a subscriber who has paid in full, it is at most the holder of the naked legal title in trust for the beneficial owner. Citizens Savings and Trust Co. *et al.* *v.* Illinois Central R. R. Co. *et al.*, 182 Fed. Rep. 607.

22. Officers of a national bank may not hold themselves out to the Comptroller of the Currency, the bank examiners, and the business public as original subscribers for and holders of its capital stock which they have never paid for, and yet escape liability on obligations given for such stock by a secret agreement among them that the stock shall be considered as belonging to the bank, and not to the one to whom it is issued. Lyons *v.* Westwater, 181 Fed. Rep. 681.

23. A stockholder in a national bank divests himself of the double liability imposed by the statute for the protection of creditors by a transfer of his stock when the bank is solvent, or even if insolvent, by a *bona fide* transfer without knowledge of the insolvency; the only ground for holding him liable after a transfer being fraud. Fowler *v.* Crouse *et al.*, 175 Fed. Rep. 646.

§ **5140.** [U. S. Comp. Stat. 1901, 3461.] At least fifty per centum of the capital stock of every association shall be paid in before it shall be authorized to commence business; and the remainder of the capital stock of such association shall be paid in instalments of at least ten per centum each, on the whole amount of the capital, as frequently as one instalment at the end of each succeeding month from the time it shall be authorized by the Comptroller of the Currency to commence business; and the payment of each instalment shall be certified to the Comptroller, under oath, by the president or cashier of the association.

§ **5141.** [U. S. Comp. Stat. 1901, p. 3462.] Whenever any shareholder, or his assignee, fails to pay any instalment on the stock when the same is required by the preceding section to be paid, the directors of such association may sell the stock of such delinquent shareholder at public auction, having given three weeks' previous notice thereof in a newspaper published and of general circulation in the city or county where the association is located; or if no newspaper is published in said city or county, then in a newspaper published nearest thereto, to any person who will pay the highest price therefor, to be not less than the amount then due thereon, with the expenses of advertisement and sale; and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association, and the cost of advertisement and sale, the amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order, within six months from the time of such forfeiture, and if not sold it shall be cancelled and deducted from the capital stock of the association. If any such cancellation and reduction shall reduce the capital of the association below the minimum of capital required by law, the capital stock shall, within thirty days from the date of such cancellation, be increased to the required amount; in default of which a receiver may be appointed, according to the provisions of section fifty-two hundred and thirty-four, to close up the business of the association.

§ **5142.** [U. S. Comp. Stat. 1901, p. 3462.] Any association formed under this title may, by its articles of association, provide for an increase of its capital from time to time, as may be deemed expedient, subject to the limitations of this title. But the maximum of such increase to be

provided in the articles of association shall be determined by the Comptroller of the Currency; and no increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained specifying the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as part of the capital of such association.

See Act of May 1, 1886, § 2, *post.*

1. The approval of the Comptroller, as required by this section, is absolutely essential to the increase of the capital stock of a national bank, and a resolution of the stockholders to that end is no more than a proposition among themselves, the effect of which is subject to the assent of the Comptroller, and until obtained the capital remains as originally fixed. Charleston *v.* People's National Bank, 5 So. Car. 114, 22 Am. Rep. 1. In this case the bank, on July 1. 1871. voted to increase its capital stock from $750,000 to $1,000,000, which, by virtue of section 5139, U. S. R. S., U. S. Comp. Stat. 1901, p. 3461, would require the issue of 2,500 additional shares. These additional shares were subscribed for by the first day of January following, and the amount thereof ($250,000) was secured to be paid by securities held by the cashier in trust for the purpose, and a semi-annual dividend was declared and paid on said additional stock, for the half year ending January 1, 1872. The Comptroller did not make his certificate required by section 5142, U. S. Comp. Stat. 1901, p 3462, till January 5, 1872, and the city of Charleston levied a tax on said additional shares assessed from January 1, 1872. Held, that the additional shares were not valid and properly constituted shares of the association, and consequently not taxable.

2. Directors of national banks have no authority to increase their (banks') capital stock; nor can the assent of individual shareholders or subscribers to such new stock, to their action in attempting so to do, confer the requisite authority or make such increased stock valid under the provisions of this section or of the Act of May, 1886, *post.* Winters *v.* Armstrong, 37 Fed. Rep. 508.

3. Unless all the requirements of both this section and the Act of May, 1886, are complied with, proceedings to increase the capital stock of a national bank are invalid, and subscriptions thereto cannot be enforced and a deposit made at the time of the subscription, to comply with a statutory requirement in respect thereto, is recoverable. Winters *v.* Armstrong, *supra.*

4. The clause in this section to the effect that "no increase of capital shall be valid until the whole amount of such increase is paid in, etc.," was intended to secure actual payment of the stock subscribed, and so to prevent watering of stock." The clause is not violated by an issue of the exact amount of stock paid for, although it does not equal the amount of increase voted for by the directors, and the fact that some of the stock remains unsubscribed is not sufficient ground for a particular stockholder to withdraw his capital. Equity might however interpose to protect subscribers to stock where a large and material deficiency in the amount of capital contemplated had occurred. Aspinwall *v.* Butler, 133 U. S. 595, 33 L. ed. 779, 10 Sup. Ct. Rep. 417.

5. This section is not violated by an issue of the exact amount of stock paid in.

It was intended to prevent watering stock. Aspinwall *v.* Butler, 133 U. S. 595, 33 L. ed. 779, 10 Sup. Ct. Rep. 417.

6. There is no implied condition that the individual subscriptions shall be void if the whole of the new stock is not subscribed. The Comptroller may assent to an increase of the capital stock less than that originally voted by the directors, but equal to the amount actually subscribed and paid for by the shareholders. Id. See also Pacific Nat. Bank *v.* Eaton, 141 U. S. 227, 35 L. ed. 702, 11 Sup. Ct. Rep. 984; Mayer *v.* Butler, 141 U. S. 234, 35 L. ed. 711, 11 Sup. Ct. Rep. 987; Butler *v.* Eaton, 141 U. S. 240, 35 L. ed. 713, 11 Sup. Ct. Rep. 985.

§ **5143.** Any association formed under this title may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by this title to authorize the formation of associations; but no such reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any such reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by the said Comptroller of the Currency and by the Federal Reserve Board, or by the organization committee pending the organization of the Federal Reserve Board.

(As amended by section 28 of Federal Reserve Act, *post.*)

1 A national bank cannot, after reducing the amount of its capital stock, retain as a surplus, or for other purposes, the whole or any portion of the money which it received for the stock that is retired. Seeley *v.* New York National Exchange Bank, 4 Abb. N. C. 61.

2. Where stock of a national bank is reduced pursuant to § 5143, but beyond the amount required to meet an impairment of capital, and the reduction is by charging off bad assets, the stockholders of record on day of reduction are entitled to the assets set free, and they and their proceeds may be set aside as a trust fund for such stockholders. Stock transfers after day of reduction do not carry any interest in such fund. Jerome *v.* Cogswell, 204 U. S. 1.

§ **5144.** [U. S. Comp. Stat. 1901, p. 3463.] In all elections of directors, and in deciding all questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such association shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote.

Where, at a corporate election of directors, votes were cast by proxy, and were disregarded by the inspectors of election, and it was shown that neither the charter

nor by-laws of the corporation provided for such manner of voting, Held, that in the absence of any such provision, corporate stockholders cannot vote by proxy. Commonwealth *v.* Bringhurst, 103 Pa. 134, 49 Am. Rep. 119.

The word "liability," as used in this section, is limited to the shareholder's liability for unpaid subscriptions to or assessments upon stock. United States *v.* Barry, 36 Fed. Rep. 246.

§ **5145.** [U. S. Comp. Stat. 1901, p. 3463.] The affairs of each association shall be managed by not less than five directors, who shall be elected by the shareholders at a meeting to be held at any time before the association is authorized by the Comptroller of the Currency to commence the business of banking; and afterward at meetings to be held on such day in January of each year as is specified therefor in the articles of association. The directors shall hold office for one year, and until their successors are elected and have qualified.

1. The provision of this section that directors shall hold office for one year and until their successors have been elected and qualified does not prohibit resignations within the year. Briggs *v.* Spaulding, 141 U. S. 132, 35 L. ed. 662, 11 Sup. Ct. Rep. 924.

2. A director does not immediately upon his election as such become responsible for the affairs of a national bank, and where there is nothing to excite suspicion, but the bank becomes bankrupt within ninety days after his election, he is not to be held individually liable because he did not compel an investigation or make a personal examination. Briggs *v.* Spaulding, *supra.*

3. When a director becomes seriously ill it is competent for the board to give him leave of absence for a year, and in his absence is not personally responsible for frauds committed on the bank without his knowledge. Briggs *v.* Spaulding, *supra.*

4. Directors of a national bank are not mere figureheads, they must exercise ordinary care and prudence in the administration of the affairs of a bank; and although they may commit the business to duly authorized officers, this does not absolve them from the duty of reasonable supervision, nor can they shield themselves from liability because of want of knowledge of wrong-doing, if their ignorance is the result of gross inattention. Briggs *v.* Spaulding, *supra.*

5. A bill by a stockholder's agent to an insolvent bank against directors to recover moneys lost by *ultra vires* transactions of the president and vice president, in which defendants participated, alleging that at a stockholders' meeting held pursuant to law plaintiff was elected as shareholders' agent to wind up the affairs of the bank in place of a receiver, and that he gave bond, as required by law, and is the duly qualified agent of the shareholders to act in the place of the receiver, sufficiently showed complainant's capacity to sue. McKinnon *v.* Morse *et al.*, 177 Fed. Rep. 576.

§ **5146.** [U. S. Comp. Stat. 1901, p. 3463.] Every director must, during his whole term of service, be a citizen of the United States, and at least three-fourths of the directors must have resided in the State, Territory, or District in which the association is located for

at least one year immediately preceding their election, and must be residents therein during their continuance in office. Every director must own, in his own right, at least ten shares of the capital stock of the association of which he is a director, unless the capital of the bank shall not exceed twenty-five thousand dollars, in which case he must own in his own right at least five shares of such capital stock. Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

(As amended by Act of February 28, 1905.)

The meaning of this section is that every director must own in his own right, during his whole term of service, at least ten shares of the stock; and that if he does not own such ten shares he cannot become or continue a director. Finn *v.* Brown, 142 U. S. 56, 35 L. ed. 936, 12 Sup. Ct. Rep. 136.

§ **5147.** [U. S. Comp. Stat. 1901, p. 3464.] Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this title, and that he is the owner in good faith, and in his own right, of the number of shares of stock required by this title, subscribed by him, or standing in his name on the books of the association, and that the same is not hypothecated, or in any way pledged, as security for any loan or debt. Such oath, subscribed by the director making it, and certified by the officer before whom it was taken, shall be immediately transmitted to the Comptroller of the Currency, and shall be filed and preserved in his office.

§ **5148.** [U. S. Comp. Stat. 1901, p. 3464.] Any vacancy in the board shall be filled by appointment by the remaining directors, and any director so appointed shall hold his place until the next election.

§ **5149.** [U. S. Comp. Stat. 1901, p. 3464.] If, from any cause, an election of directors is not made at the time appointed, the association shall not for that cause be dissolved, but an election may be held on any subsequent day, thirty days' notice thereof in all cases having been given in a newspaper published in the city, town, or county in which the association is located; and if no newspaper is published in such city,

town, or county, such notice shall be published in a newspaper published nearest thereto. If the articles of association do not fix the day on which the election shall be held, or if no election is held on the day fixed, the day for the election shall be designated by the board of directors in their by-laws, or otherwise; or if the directors fail to fix the day, shareholders representing two-thirds of the shares may do so.

§ 5150. [U. S. Comp. Stat. 1901, p. 3465.] One of the directors, to be chosen by the board, shall be the president of the board.

1. A national bank president cannot by virtue of his office draw checks against his bank's account in another bank. Putnam *v.* U. S., 162 U. S. 687, 40 L. ed. 1118, 16 Sup. Ct. Rep. 923.

2. A president continues in office after suspension of bank pending examination and until appointment of a receiver. Amer. Surety Co. *v.* Pauly, 170 U. S. 168, 42 L. ed. 993, 18 Sup. Ct. Rep. 563.

§ 5151. [U. S. Comp. Stat. 1901, p. 3465.] The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association now existing under State laws, having not less than five millions of dollars of capital actually paid in, and a surplus of twenty per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of twenty per centum shall be kept undiminished, and be in addition to the surplus provided for in this title; and if at any time there is a deficiency in such surplus of twenty per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of chapter four of this title.

For the purposes of construction, this section and section 5139, are to be considered together. Waite, C. J., Davis *v.* Stevens, 17 Blatchf. 259, Fed. Cas. No. 3,653. They originally formed part of the same section, viz., section 12 of the Act of June 3, 1864. See notes to sections 5139 and 5152.

1. The liability of the stockholders is several, not joint. The limit of their liability is the par of the stock held by each one. Kennedy *v.* Gibson, 8 Wall. 505, 19 L. ed. 478.

2. It was not intended to put the shareholders in the relation of guarantors or sureties, "one for another," as to the amount which each might be required to pay. Hence the insolvency of one stockholder, or his being beyond the jurisdiction of the court, does not in any way affect the liability of another. United States *v.* Knox, 102 U. S. (12 Otto) 425, 26 L. ed. 216.

3. In fixing the liability of each shareholder, it is necessary to ascertain, first, the whole amount of the par value of the stock held by all the shareholders: second, the amount of the deficit to be paid after exhausting all the assets of the bank; third, then to apply the rule that each shareholder shall contribute such sum (not exceeding the par value of the amount of stock held by him) as will bear the same proportion to the whole amount of the deficit, as his stock bears to the whole amount of the capital stock of the bank at its par value. (SWAYNE, J.) Id.

4. When a person buys national bank stock, and to avoid a stockholder's responsibility causes it to be registered in the name of another who is pecuniarily irresponsible, the buyer, so long as he remains the actual owner, is a shareholder within the meaning of this section and section 5139, U. S. Comp. Stat. 1901, p. 3461. In such case, both the actual and registered owners are liable. Davis *v.* Stevens, 17 Blatchf. 259, Fed. Cas. No. 3,653; Bowden *v.* Johnson, 107 U. S. 251, 27 L. ed. 386, 2 Sup. Ct. Rep. 246. See, also, National Bank *v.* Case, 99 U. S. 628, 25 L. ed. 448, where it was held that if a registered owner transferred his stock in a failing corporation to an irresponsible person, for the mere purpose of escaping liability, or if the transfer was colorable only, the transaction was void as against creditors.

5. The liability assumed by virtue of this section by a purchaser of stock in a national bank is not by contract, but wholly statutory. Hence it exists as an incident of the ownership of the stock, and attaches to all who are legally capable and become owners, without reference to any supposed voluntary assumption of the liability by express or implied contract. Hence, where national bank stock is held by a *feme covert*, either in her own right, or subject to the common-law marital rights of the husband, she alone is liable for the consequences of such ownership, and her individual liability may be enforced without joining the husband, as would be the case in the enforcement of any common-law liability against her. Keyser *v.* Hitz, 2 Mackey Sup. Ct. (D. C.) 473. But to the contrary of the proposition, that the liability assumed by virtue of this section by a shareholder in a national bank is wholly statutory, see Davis *v.* Weed (a case decided in the United States District Court for District of Connecticut, and reported in 44 Conn. 569, Fed. Cas. No. 3,658, pp. 500, 501), in which case it was held (SHIPMAN, J.) that the liability of such shareholder to pay the assessments which may be ordered by the Comptroller was "a voluntary agreement, evidenced by his subscription or by his becoming a stockholder." That "it is not imposed by way of forfeiture or penalty." That "it is imposed by the statute, but it also exists by virtue of the contract which" the shareholder "entered into when he became a stockholder." And again in the following case (Davis *v.* Essex Baptist Society, 44 Conn. 582, Fed. Cas. No. 3,633), the same Justice says: "The liability of the stockholder arises from his virtual contract, etc. . . . It is not in form a contract, but is an agreement resulting from the assent of the parties to the statutory liability," citing Lowry *v.* Inman, 46 N. Y. 125; Hawthorne *v.* Calef, 2 Wall. 22, 17 L. ed. 779; Corning *v.* McCullough, 1 N. Y. 47, 49 Am. Dec. 287.

6. In Laing *v.* Burley, 101 Ill. 591, the court speaking of this section said: "It will be noted the liability is imposed upon the 'shareholder,' and it is a matter of no consequence that such shares may not have been transferred to such shareholder on the

books of the association in exact conformity with its by-laws. It is sufficient if the ownership of the shares is in fact in the person holding the certificate, to constitute him a shareholder, in the association, and subject him to the liabilities imposed by the Banking Law under which such association may have been organized," citing Wheelock *v.* Kost, 77 Ill. 396. See Richmond *v.* Irons, 121 U. S. 27, 30 L. ed. 864, 7 Sup. Ct. Rep. 788, *post.*

7. The statutory liability of a shareholder in a national bank for the debts of the corporation survive as against his personal representatives. Richmond *v.* Irons, 121 U. S. 27, 30 L. ed. 864, 7 Sup. Ct. Rep. 788.

8. Such a shareholder continues liable until his stock has been actually transferred on the books of the company, or until the certificate is delivered with power of attorney and request made for transfer on the book. But delivering to a president of a national bank as vendee not officially will not discharge the liability of the selling shareholder under the decision in Whitney *v.* Butler, 118 U. S. 655, 30 L. ed. 266, 7 Sup. Ct. Rep. 61, *post;* Richmond *v.* Irons, *supra.*

9. Creditors of a national bank, who after the bank's suspension accept bills receivable guaranteed by the bank through its president, cannot subsequently claim as creditors against stockholders. Such stockholders are not liable for the payment of such guaranteed bills issued after suspension, and can be made liable only by express agreement. Richmond *v.* Irons, *supra.*

10. A shareholder is liable for interest on claims against national banks not exceeding the amount to which the bank is liable, nor exceeding the maximum liability fixed by statute. Richmond *v.* Irons, *supra.*

11. The expenses of a receivership occasioned by a creditor's suit are not chargeable to stockholders, but to the creditors. Richmond *v.* Irons, *supra.*

12. Where A. sold national bank stock at auction and delivered the certificate of stock, with power of attorney executed in blank, and purchaser at auction acted only as agent for the president of the bank, who was acting for a bank customer who has deposited money therein for the purchase subsequently and before the transfer of the stock on the transfer book of the bank, the bank becomes insolvent. Held that A. was not liable under § 5205, inasmuch as his responsibility ceased upon his delivery of the certificate of stock to the bank, as that was intended to effect a transfer. Whitney *v.* Butler, *supra,* 118 U. S. 655, 30 L. ed. 266, 7 Sup. Ct. Rep. 61.

13. Plaintiff held thirty shares of stock in a national bank with a capital of $500,000, and right to increase it to $1,000,000. The directors voted to increase the capital stock to $1,000,000, and plaintiff subscribed for thirty additional shares, and paid for it. The amount actually subscribed and paid for was $461,300, but of this deficiency plaintiff had no notice. Subsequently the bank became insolvent, and the directors cancelled the increase and reported it to the Comptroller of the Currency. No vote of the stockholders was had on the increase or decrease.

Pursuant to § 5205, the Comptroller called for an assessment to pay the deficiency in the capital stock, which was levied and paid by plaintiff with the assurance of one of the directors that there would be no further assessment. Again the bank went into insolvency, and plaintiff was assessed, for a deficiency, on his sixty shares of stock. Held, that such increase of capital stock was valid and binding on plaintiff. That the first assessment could not be applied in law or equity to the discharge of assessments made by the comptroller in final liquidation of the bank. Delano *v.* Butler, Receiver, 118 U. S. 634, 30 L. ed. 260, 7 Sup. Ct. Rep. 39.

14. The pledgee of stock in a national bank who holds the same solely as collateral

security for a debt due it from the real owner of the stock cannot be held liable for the assessments thereon, when the name of the pledgee as owner or holder of the shares has never appeared on the books of the bank, or even upon the certificates of stock. Wells *v.* Larrabee, 36 Fed. Rep. 866, 2 L. R. A. 471.

15. A person who is not the owner of stock and has no beneficial interest therein cannot be held liable for the assessments thereon, by reason of the fact that the shares have been assigned to him to hold in trust, it appearing upon the proper books of the bank that he holds the same as trustee. Id.

16. Where a person subscribes for 100 shares of a proposed increase of the capital stock of the national bank, which increase is not made, but 100 shares of the old stock are transferred to the subscriber, without his knowledge or subsequent ratification, and a dividend is subsequently declared and paid to the subscriber, who receives it and does not tender it back, Held that receiving and retaining the dividend was not conclusive proof that he was a stockholder, and does not waive his right to deny that he is a stockholder, and that under the circumstances of the case he was not a stockholder within the law imposing individual liability. Stephens *v.* Follett, 43 Fed. Rep. 842.

17. In the absence of any agreement or condition that the amount of increase of the capital stock of a bank voted for by the directors shall not be changed, the subsequent reduction of the amount to the amount actually subscribed for will not have the effect of enabling a subscriber to the increase and before the reduction to repudiate his subscription and his acceptance of stock and therefore his liability under this section, unless he can show that the change was fraudulently made or was made to such an inequitable extent as to defeat the purpose and object of the increase. Aspinwall *v.* Butler, 133 U. S. 595, 33 L. ed. 779, 10 Sup. Ct. Rep. 417.

18. The owner of shares placing them in another's name to evade liability, and similar situations and pledging of shares and the cases thereon reviewed. Pauly *v.* State Loan & Trust Co., 165 U. S. 606, 41 L. ed. 844, 17 Sup. Ct. Rep. 465.

19. Liability of all shareholders in national banks who are *sui juris*, is contractual and not statutory. Concord Bank *v.* Hawkins, 174 U. S. 372, 43 L. ed. 1011, 19 Sup. Ct. Rep. 739.

20. A national bank receiving shares of another national bank as collateral, and bidding them in after default in loan, and there being no transfer of the shares on book of borrowing bank, the former cannot be held liable for assessments. Robinson *v.* South. Nat. Bank, 180 U. S. 310, 45 L. ed. 542, 21 Sup. Ct. Rep. 383.

21. The owner of national bank shares cannot avoid liability on the ground that the share had been unlawfully purchased by the bank. Lautry *v.* Wallace, 182 U. S. 553, 45 L. ed. 1226, 21 Sup. Ct. Rep. 878.

22. A national bank may borrow money to meet pressing demands giving time obligations with its assets as security. If the collateral is insufficient the stockholders, assenting and nonassenting, are liable under § 5151. Wyman *v.* Wallace, 301 U. S. 230.

23. The determination of the Comptroller as to collection of assessment on stock is conclusive, is derived from Federal authority and cannot be limited by State statutes. Rankin *v.* Barton, 199 U. S. 228.

24. While a pledgee of national bank stock cannot be held for double liability as a shareholder if the stock is not registered in his name, the real owner may be liable although the stock is not registered in his name. Ohio Valley Nat. Bank *v.* Hulitt, 204 U. S. 162.

25. The liability of a shareholder in a national bank is not based on contract, but on the provisions of the National Banking Act. A married woman in a State where she cannot enter into a contract is liable for an assessment levied by Comptroller. Christopher *v.* Norvell, 201 U. S. 216.

26. Shareholders who have complied, so far as steps required to be done on their part is concerned, with the provisions of the act of July 12, 1882 (22 Stat. 162, ch. 290), in regard to withdrawing from a national banking association, two-thirds of the shareholders whereof have asked for a renewal of the charter, cease to be members of the association even if, through no fault of their own, the final action is not taken; and such shareholders are not liable for assessments subsequently made by the Comptroller of the Currency under section 5151, Revised Statutes. Apsey *v.* Kimball, 221 U. S. 514.

27. Revised Statutes, section 5151 providing that the owner of shares in a national banking association shall be liable to the amount of his stock for the debts of the bank applies only to the actual owner of the stock and not to a bona fide pledge thereof as collateral security. Williamson *v.* American Bank, 185 Fed. Rep. 66.

28. An action in equity will lie to rescind a purchase of national bank stock on the ground of fraud, against the bank and its receiver. Ryan *v.* Mt. Vernon Nat'l Bank, 206 Fed. 452; Lantry *v.* Wallace, 182 U. S. 549.

29. Comptroller of Currency has power to appoint receiver and to call for a ratable assessment without previous judicial decision of such necessity. Rankin *v.* Miller, 207 Fed. 602.

§ **5152.** [U. S. Comp. Stat. 1901, p. 3465.] Persons holding stock as executors, administrators, guardians, or trusteees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be if living and competent to act and hold the stock in his own name.

1. The principal object of this section is to prevent a personal liability from running against the persons named in this section, who have purchased in their representative capacity, or to whom national bank shares have been transferred as such representatives for the benefit of the trust estate. Davis *v.* Weed, 44 Conn. 581, Fed. Cas. No. 3,658.

2. This section was not intended to affect the liability of estates in process of settlement. The liability of the stockholder is in the nature of contract, and as such is a personal liability for which his estate is holden at his death. Id., citing Hawthorne *v.* Calef, 2 Wall. 22, 17 L. ed. 779; Lowry *v.* Inman, 46 N. Y. 119.

3. But to avail themselves of this exemption, trustees must disclose their trusteeship on the books of the bank. If they do not, they are guilty of *laches*, and in an action in such case to hold them personally liable, they cannot resort to extrinsic evidence for the purpose of proving the trust. Davis *v.* Essex Baptist Society, 44 Conn. 586, Fed. Cas. No. 3,633.

4. The liability of a deceased shareholder on his stock survives against his estate. The purpose of section 5151 of the National Bank Act is to render the excess of the

amount paid by the stockholders up to the par value an asset in his hands, to be resorted to in case of the insolvency of the bank for the payment of its debts Section 5152 is designed to protect those holding such stock in a representative capacity from any personal liability, and only makes the funds in their hands, or under their control, liable. Irons *v.* Manufacturers' National Bank, 27 Fed. Rep. 591.

5. Transfer of shares after insolvency of bank will not evade liability, nor will transfer of shares in contemplation of bank's insolvency. Stuart *v.* Hayden, 169 U. S. 1, 42 L. ed. 639, 18 Sup. Ct. Rep. 274.

§ 5153. All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided,* That the Secretary shall, on or before the first of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided,* That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections.

(As amended March 4, 1907.)

(As re-enacted and amended by section 27 of Federal Reserve Act, *post.* The above text is as prior to May 30, 1908.)

Note: Above section was not in express terms amended by Act of May 30, 1908, but section 15 of that act which affected depositaries was modified by section 27 of Federal Reserve Act.

1. Designating a national bank as a depositary of public money under this section does not change the character of its organization, or convert its managers into public officers, or give to the Government any additional control over the institution, or render the United States liable for any of the acts, contracts or obligations of the bank. Nor does it constitute the bank a general financial agent of the Government; but when after such a designation it is required by law or by direction of the Secretary of the Treasury to perform any financial duties for the United States, it then becomes a

special agent for the particular purpose required, with no power to bind the Government beyond the special authority conferred upon it. In short, constituting a national bank a depositary of public money is an employment of the institution for business purposes, as it is employed by individual depositors, and not an assumption of its powers and liabilities by the national government; nor the making of it, as an institution, a part of the United States Treasury. Branch *v.* United States, 12 Ct. of Cl. 44; S. C. 12 Bank. Mag. 61. In this case certain moneys coming into possession of the clerk of a Federal court pending a litigation were by him deposited in a national bank which had been designated as a depositary of public moneys. The bank failed. Held, that the United States were not liable for the money so deposited.

2. The term "public money," as used in the statutes of the United States, ordinarily means the money of the government, received from the public revenues, or intrusted to its officers charged with the duty of receiving, keeping, or disbursing the same, whatever it may be. Id.

§ 5154. Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with any name approved by the Comptroller of the Currency:

Provided, however, That said conversion shall not be in contravention of the State law. In such case the articles of association and organization certificate may be executed by a majority of the directors of the bank or banking institution, and the certificate shall declare that the owners of fifty-one per centum of the capital stock have authorized the directors to make such certificate and to change or convert the bank or banking institution into a national association. A majority of the directors, after executing the articles of association and the organization certificate, shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a national association. The shares of any such bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the association until others are elected or appointed in accordance with the provisions of the statutes of the United States. When the Comptroller has given to such bank or banking association a certificate that the provisions of this Act have been complied with, such bank or banking association,

and all its stockholders, officers, and employees, shall have the same powers and privileges, and shall be subject to the same duties, liabilities, and regulations, in all respects, as shall have been prescribed by the Federal Reserve Act and by the National Banking Act for associations originally organized as national banking associations.

(As amended by section 8 of the Federal Reserve Act, *post.*)

See Act of February 14, 1880, *post*, as to conversion of gold banks.

1. No authority from the State is necessary to enable a State bank to organize as a national bank. Casey *v.* Galli, 94 U. S. (4 Otto) 673, 24 L. ed. 168.

2. The certificate of the Comptroller is conclusive as to the regularity of the proceedings by which the conversion is effected. Id.

3. The fact that a bank is shown to have been doing business long prior to the date of its organization as a national bank does not prove that it is a different body from that named in the certificate. Section 5154, U. S. R. S., makes full provision for banks incorporated under State laws to organize as national banks. Thatcher *v.* West River Nat. Bank, 19 Mich. 196.

4. When two-thirds of the stockholders of a State bank consent to its conversion into a national bank, such conversion may take place without reference to the concurrence of the rest. Keyser *v.* Hitz, 2 Mackey, 490.

5. It seems that in order for a stockholder in the old (State) bank (or at least one who has not consented to the conversion) to become a stockholder in the new (national) bank his consent that his original stock shall be converted into stock of the national bank must first be obtained. Id.

6. When, however, this consent is given, he becomes by virtue of that consent a stockholder in the new bank, notwithstanding an omission to issue new certificates in the name of the national bank. Id.

7. Although more regular, it is not necessary that, upon conversion, a new stock book should be opened and new certificates issued in the name of the national bank; neither the rights nor liabilities of the stockholders are affected by the failure to do so. Id.

8. It seems that savings banks may take advantage of this section to organize as national banks. Id.

9. The conversion of a State bank into a national bank works no dissolution of the former. There is a transition, but not a new creation. The liabilities remain the same. Coffey *v.* National Bank, 46 Mo. 140, 2 Am. Rep. 488; Maynard *v.* Bank, 1 Brewst. (Penn.) 483; Kelsey *v.* National Bank, 69 Penn. St. 426.

10. Nor does such conversion pay off or refund the stock of the State bank; until provided for, such stock is outstanding after the conversion. Maynard *v.* Bank, 7 Phila. 6.

11. Where, under the provisions of the National Banking Act, and under authority of the Act of 1865 (ch. 97, Laws of 1865), a State bank is transformed into a national bank, it is but a continuance of the same body under a changed jurisdiction, and between it and those who have contracted with it, it retains its identity, and may as a national bank enforce contracts made with it as a State bank.

12. Where, therefore, a State bank, at the time of its change to a national bank held a continuing guaranty of loans made by it to one W., upon the strength of which it had made loans, and after the change further advances were made, Held, that

an action was maintainable by the national bank upon the guaranty; and that the guarantor was liable for the loans made both before and after the change. City Nat. Bank v. Phelps, 97 N. Y. 44, 49 Am. Rep. 513.

§ 5155. [U. S. Comp. Stat. 1901, p. 3467.] It shall be lawful for any bank or banking association, organized under State laws, and having branches, the capital being joint and assigned to and used by the mother bank and branches in definite proportions, to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain; the amount of the circulation redeemable at the mother bank, and each branch, to be regulated by the amount of capital assigned to and used by each.

§ 5156. [U. S. Comp. Stat. 1901, p. 3467.] Nothing in this Title shall affect any appointments made, acts done, or proceedings had or commenced prior to the third day of June, eighteen hundred and sixty-four, in or toward the organization of any national banking associations under the act of February twenty-five, eighteen hundred and sixty-three; but all associations which, on the third day of June, eighteen hundred and sixty-four, were organized or commenced to be organized under that act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities and restrictions imposed by this Title, notwithstanding all the steps prescribed by this Title for the organization of associations were not pursued, if such associations were duly organized under that act.

CHAPTER II

Obtaining and Issuing Circulating Notes

§ **5157.** [U. S. Comp. Stat. 1901, p. 3468.] The provisions of chapters two, three and four of this Title, which are expressed without restrictive

words, as applying to "national banking associations," or to "associations," apply to all associations organized to carry on the business of banking under any act of Congress.

§ 5158. [U. S. Comp. Stat. 1901, p. 3469.] The term "United States bonds," as used throughout this chapter, shall be construed to mean registered bonds of the United States.

§ 5159. [U. S. Comp. Stat. 1901, p. 3469.] Every association, after having complied with the provisions of this Title, preliminary to the commencement of the banking business, and before it shall be authorized to commence banking business under this Title, shall transfer and deliver to the Treasurer of the United States any United States registered bonds, bearing interest, to an amount not less than thirty thousand dollars, and not less than one-third of the capital stock paid in. Such bonds shall be received by the Treasurer upon deposit, and shall be by him safely kept in his office, until they shall be otherwise disposed of, in pursuance of the provisions of this Title.

See, for modification and repeal in part of above, section 17 of Federal Reserve Act, *post.*

See Act of June 20, 1874, § 4, *post;* Act of July 12, 1882, §§ 8, 10, *post.*

1. A national bank has the equitable, if not the legal, interest in the securities transferred or delivered to the United States Treasurer under this section, subject to their disposal, or the disposal of so much of them as may be necessary for the redemption of the circulating notes of the banks; and this residuary interest the bank may, in the ordinary course of its business before the appointment of any receiver, assign for a proper consideration. *Per* HALL, J. Van Antwerp *v.* Hulburd, 8 Blatchf. 282, Fed. Cas. No. 16,827.

2. The residuary interest of the bank in the securities thus pledged, if not assigned by the bank before the appointment of a receiver, is necessarily a part of the assets of the bank; the same as though such securities had been pledged to a private person as collateral security for the payment of an ordinary commercial debt; and a properly appointed receiver, as the representative of the bank, has the right to demand and receive the property so pledged as an asset of the bank, in the one case the same as in the other. Id.

3. Until the moneys representing such residuary interest are legally transferred from the Treasurer to the receiver, they are in the possession of the Treasurer, as the officer of the United States, as the holder of a pledge for the bank. Id.

§ 5160. [U. S. Comp. Stat. 1901, p. 3469.] The deposit of bonds made by each association shall be increased as its capital may be paid up or increased, so that every association shall at all times have on

deposit with the Treasurer registered United States bonds to the amount of at least one-third of its capital stock actually paid in. And any association that may desire to reduce its capital or to close up its business and dissolve its organization, may take up its bonds upon returning to the Comptroller its circulating notes in the proportion hereinafter required, or may take up any excess of bonds beyond one-third of its capital stock, and upon which no circulating notes have been delivered.

See Act of July 12, 1882, §§ 8 and 10, *post*.
See section 17 of Federal Reserve Act, *post*.

§ **5161.** [U. S. Comp. Stat. 1901, p. 3469.] To facilitate a compliance with the two preceding sections, the Secretary of the Treasury is authorized to receive from any association, and cancel, any United States coupon bonds, and to issue in lieu thereof registered bonds of like amount, bearing a like rate of interest, and having the same time to run.

§ **5162.** [U. S. Comp. Stat. 1901, p. 3470.] All transfers of United States bonds, made by any association under the provisions of this Title, shall be made to the Treasurer of the United States in trust for the association, with a memorandum written or printed on each bond, and signed by the cashier, or some other officer of the association making the deposit. A receipt shall be given to the association, by the Comptroller of the Currency, or by a clerk appointed by him for that purpose, stating that the bond is held in trust for the association on whose behalf the transfer is made, and as security for the redemption and payment of any circulating notes that have been or may be delivered to such association. No assignment or transfer of any such bond by the Treasurer shall be deemed valid unless countersigned by the Comptroller of the Currency.

§ **5163.** [U. S. Comp. Stat. 1901, p. 3470.] The Comptroller of the Currency shall keep in his office a book in which he shall cause to be entered, immediately upon countersigning it, every transfer or assignment by the Treasurer of any bonds belonging to a national banking association presented for his signature. He shall state in such entry the name of the association from whose account the transfer is made, the name of the party to whom it is made, and the par value of the bonds transferred.

§ **5164.** [U. S. Comp. Stat. 1901, p. 3470.] The Comptroller of the Currency shall, immediately upon countersigning and entering any transfer or assignment by the Treasurer of any bonds belonging to a national banking association, advise by mail the association from whose accounts the transfer is made, of the kind and numerical designation of the bonds, and the amount thereof so transferred.

§ **5165.** [U. S. Comp. Stat. 1901, p. 3470.] The Comptroller of the Currency shall have at all times, during office hours, access to the books of the Treasurer of the United States, for the purpose of ascertaining the correctness of any transfer or assignment of the bonds deposited by an association presented to the Comptroller to countersign; and the Treasurer shall have the like access to the book mentioned in section fifty-one hundred and sixty-three during office hours, to ascertain the correctness of the entries in the same; and the Comptroller shall also at all times have access to the bonds on deposit with the Treasurer to ascertain their amount and condition.

§ **5166.** [U. S. Comp. Stat. 1901, p. 3471.] Every association having bonds deposited in the office of the Treasurer of the United States shall, once or oftener in each fiscal year, examine and compare the bonds pledged by the association with the books of the Comptroller of the Currency and with the accounts of the association and if they are found correct, to execute to the Treasurer a certificate setting forth the different kinds and the amounts thereof, and that the same are in the possession and custody of the Treasurer at the date of the certificate. Such examination shall be made at such time or times, during the ordinary business hours, as the Treasurer and the Comptroller, respectively, may select, and may be made by an officer or agent of such association, duly appointed, in writing, for that purpose; and his certificate, before mentioned, shall be of like force and validity as if executed by the president or cashier. A duplicate of such certificate, signed by the Treasurer, shall be retained by the association.

§ **5167.** [U. S. Comp. Stat. 1901, p. 3471.] The bonds transferred to and deposited with the Treasurer of the United States, by any association, for the security of its circulating notes, shall be held exclusively for that purpose, until such notes are redeemed, except as provided in this Title.

The Comptroller of the Currency shall give to any such association powers of attorney to receive and appropriate to its own use the interest on the bonds which it has so transferred to the Treasurer; but such powers shall become inoperative whenever such association fails to redeem its circulating notes. Whenever the market or cash value of any bonds thus deposited with the Treasurer is reduced below the amount of the circulation issued for the same, the Comptroller may demand and receive the amount of such depreciation in other United States bonds at cash value, or in money, from the association, to be deposited with the Treasurer as long as such depreciation continues. And the Comptroller, upon the terms prescribed by the Secretary of the Treasury, may permit an exchange to be made of any of the bonds deposited with the Treasurer by any association for other bonds of the United States authorized to be received as security for circulating notes, if he is of opinion that such an exchange can be made without prejudice to the United States; and he may direct the return of any bonds to the association which transferred the same, in sums of not less than one thousand dollars, upon the surrender to him and the cancellation of a proportionate amount of such circulating notes; *Provided*, That the remaining bonds which shall have been transferred by the association offering to surrender circulating notes are equal to the amount required for the circulating notes not surrendered by such association, and that the amount of bonds in the hands of the Treasurer is not diminished below the amount required to be kept on deposit with him, and that there has been no failure by the association to redeem its circulating notes, nor any other violation by it of the provisions of this Title, and that the market or cash value of the remaining bonds is not below the amount required for the circulation issued for the same.

See Act of June 20, 1874, *post;* Act of July 12, 1882, §§ 8 and 9, *post;* Act of March 14, 1900, § 12, *post.*
See section 17 of Federal Reserve Act, *post.*

§ **5168.** [U. S. Comp. Stat. 1901, p. 3474.] Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in this Title, and the association transmitting the same notifies the Comptroller that at least fifty per centum of its capital stock has been duly paid in, and that such association has complied with all the provisions of this Title required to be complied with before an association shall be au-

thorized to commence the business of banking, the Comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of this Title required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the Comptroller to determine whether the association is lawfully entitled to commence the business of banking.

See note to the following section.

§ **5169.** [U. S. Comp. Stat. 1901, p. 3474.] If upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the Comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the Comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the Comptroller may withhold from an association his certificate authorizing the commencement of business whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this Title.

It is the duty of the Comptroller to decide as to the completeness of organization, and his certificate of compliance with the National Banking Act removes any objection which might otherwise have been raised to the evidence upon which he acted. Thatcher *v.* West River National Bank, 19 Mich. 196; Casey *v.* Galli, 94 U. S. 673, 24 L. ed. 168; Keyser *v.* Hitz, 2 Mackey, 490.

§ **5170.** [U. S. Comp. Stat. 1901, p. 3474.] The association shall cause the certificate issued under the preceding section to be published in some newspaper printed in the city or county where the association is located, for at least sixty days next after the issuing thereof; or, if no newspaper is published in such city or county, then in the newspaper published nearest thereto.

§ 5171.

Repealed by Act of July 12, 1882, § 10, *post.*
See Act of March 14, 1900, *post.*

§ 5172. In order to furnish suitable notes for circulation, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved, in the best manner to guard against counterfeiting and fraudulent alterations, and shall have printed therefrom, and numbered, such quantity of circulating notes in blank, of the denominations of one dollar, two dollars, three dollars, five dollars, ten dollars, twenty dollars, fifty dollars, one hundred dollars, five hundred dollars and one thousand dollars, as may be required to supply the associations entitled to receive the same. Such notes shall express upon their face that they are secured by United States bonds, deposited with the Treasurer of the United States, by the written or engraved signatures of the Treasurer and Register, and by the imprint of the seal of the Treasury; and shall also express upon their face the promise of the association receiving the same to pay on demand, attested by the signatures of the president or vice-president and cashier; and shall bear such devices and such other statements, and shall be in such form as the Secretary of the Treasury shall, by regulation, direct.

(As amended by Federal Reserve Act, section 27, *post.* The above text is as prior to May 30, 1908.)

See section 5183 and notes.

The imprint of the seal of the Treasury is simply intended to be evidence with regard to the security of the contract, and forms no part of the contract itself. Hence the circulating notes of a national bank are valid without it. U. S. *v.* Bennett, 17 Blatch. 357.

§ 5173. [U. S. Comp. Stat. 1901, p. 3478.] The plates and special dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws respecting the procuring of such notes, and all other expenses of the Bureau of the Currency, shall be paid out of the proceeds of the taxes or duties assessed and collected on the circulation of national banking associations under this Title.

See Act of June 20, 1874, § 3, and Act of July 12, 1882, § 8, *post.*
See section 17 of Federal Reserve Act, *post.*

§ 5174. [U. S. Comp. Stat. 1901, p. 3478.] The Comptroller of the Currency shall cause to be examined, each year, the plates, dies, bed-pieces and other material from which the national bank circulation is printed, in whole or in part, and file in his office annually a correct list of the same. Such material as shall have been used in the printing of the notes of associations which are in liquidation, or have closed business, shall be destroyed under such regulations as shall be prescribed by the Comptroller of the Currency and approved by the Secretary of the Treasury. The expenses of any such examination or destruction shall be paid out of any appropriation made by Congress for the special examination of national banks and bank-note plates.

(Word "bed-pieces" inserted by Act of February 27, 1877.)

§ 5175. [U. S. Comp. Stat. 1901, p. 3478.] Not more than one-sixth part of the notes furnished to any association shall be of a less denomination than five dollars. After specie payments are resumed no association shall be furnished with notes of a less denomination than five dollars.

See Act of March 14, 1900, section 12, *post.*

§ 5176.

Repealed by Act of July 12, 1882, § 10, *post.*
See Act of March 14, 1900, *post.*

§ 5177.

Repealed by Act of January 14, 1875, § 3, *post.*

§ 5178. [U. S. Comp. Stat. 1901, p. 3480.] *One hundred and fifty millions of dollars of the entire amount of circulating notes authorized to be issued shall be apportioned to associations in the States, in the Territories, and in the District of Columbia, according to representative population. One hundred and fifty millions shall be apportioned by the Secretary of the Treasury among associations formed in the several States, in the Territories, and in the District of Columbia, having due regard to the existing banking capital resources, and business of such States, Territories and District. The remaining fifty-four millions shall be apportioned among associations*

in States and Territories having, under the apportionments above prescribed, less than their full proportion of the aggregate amount of notes authorized, which made due application for circulating notes prior to the twelfth day of July, eighteen hundred and seventy-one. Any remainder of such fifty-four millions shall be issued to banking associations applying for circulation notes in other States or Territories having less than their proportion.

Superseded by Act of January 14, 1875, § 3, *post.*

§ **5179.** [U. S. Comp. Stat. 1901, p. 3480.] *In order to secure a more equitable distributing of the national banking currency, there may be issued circulating notes to banking associations organized in States and Territories having less than their proportion, and the amount of circulation herein authorized shall, under the direction of the Secretary of the Treasury, as it may be required for this purpose, be withdrawn, as herein provided, from banking associations organized in States having more than their proportion, but the amount so withdrawn shall not exceed twenty-five million dollars; Provided, that no circulation shall be withdrawn under the provisions of this section until after the fifty-four millions granted in the first section of the act of July twelfth, eighteen hundred and seventy, shall have been taken up.*

Superseded by Act of January 14, 1875, § 3, *post;* see Act of June 20, 1874, § 7, *post.*

§ **5180.** [U. S. Comp. Stat. 1901, p. 3480.] The Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, make a statement showing the amount of circulation in each State and Territory, and the amount necessary to be withdrawn from each association, and shall forthwith make a requisition for such amount upon such associations commencing with those having a circulation exceeding one million of dollars, in States having an excess of circulation, and withdrawing their circulation in excess of one million of dollars, and then proceeding proportionately with other associations having a circulation exceeding three hundred thousand dollars, in States having the largest excess of circulation, and reducing the circulation of such associations in States having the greatest proportion in excess, leaving undisturbed the associations in States having a smaller proportion, until those in greater excess have been reduced to the same grade, and continuing thus to make such reductions until the full amount of twenty-five millions has

been withdrawn; and the circulation so withdrawn shall be distributed among the States and Territories having less than their proportion, so as to equalize the same. Upon failure of any association to return the amount of circulating notes so required, within one year, the Comptroller shall sell at public auction, having given twenty days' notice thereof in one daily newspaper printed in Washington and one in New York City, an amount of the bonds deposited by that association as security for its circulation equal to the circulation required to be withdrawn from the association and not returned in compliance with such requisition; and he shall, with the proceeds, redeem so many of the notes of such association, as they come into the treasury, as will equal the amount required and not returned; and shall pay the balance, if any, to the association.

See as to repeal of this section Act of January 14, 1875, § 3, *post*.

§ **5181.** [U. S. Comp. Stat. 1901, p. 3481.] Any association located in any State having more than its proportion of circulation may be removed to any State having less than its proportion of circulation, under such rules and regulations as the Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall prescribe; *Provided*, That the amount of the issue of said banks shall not be deducted from the issue of fifty-four millions mentioned in section five thousand one hundred and seventy-eight.

See as to repeal of this section Act of January 14, 1875, § 3, *post*.

§ **5182.** [U. S. Comp. Stat. 1901, p. 3481.] After any association receiving circulating notes under this Title has caused its promise to pay such notes on demand to be signed by the president or vice-president and cashier thereof, in such manner as to make them obligatory promissory notes, payable on demand, at its place of business, such association may issue and circulate the same as money. And the same shall be received at par in all parts of the United States in payment of taxes, excises, public lands, and all other duties to the United States, except duties on imports; and also for all salaries and other debts and demands owing by the United States to individuals, corporations and associations within the United States, except interest on the public debt, in redemption of the national currency.

§ **5183.** [U. S. Comp. Stat. 1901, p. 3482.] No national banking association shall issue post-notes or any other notes to circulate as money than such as are authorized by the provisions of this Title.

See section 5172, *ante*.

1. The certification of checks in the ordinary manner in the course of business, by national banks, does not come within the prohibition of this section. Merchants' Bank *v.* State Bank, 10 Wall. 604, 19 L. ed. 1008.

2. A certificate of deposit payable at a future day is a promissory note, and void under a statute prohibiting the circulation by a bank of its bills or notes not payable on demand. Bank of Orleans *v.* Merrill, 2 Hill, 295; Leavitt *v.* Palmer, 3 N. Y. 19, 51 Am. Dec. 333.

3. Certificates of deposit in the ordinary form payable to order are not post-notes within the meaning of above section. Riddle *v.* Nat. Bank, 27 Fed. Rep. 503.

4. The statute of limitations does not commence to run against such certificate until demand for payment. Id.

§ **5184.** [U. S. Comp. Stat. 1901, p. 3482.] It shall be the duty of the Comptroller of the Currency to receive worn-out or mutilated circulating notes issued by any banking association, and also, on due proof of the destruction of any such circulating notes to deliver in place thereof to the association other blank circulating notes to an equal amount. Such worn-out or mutilated notes, after a memorandum has been entered in the proper books, in accordance with such regulations as may be established by the Comptroller, as well as all circulating notes which shall have been paid or surrendered to be cancelled, shall be macerated in presence of four persons, one to be appointed by the Secretary of the Treasury, one by the Comptroller of the Currency, one by the Treasurer of the United States, and one by the association, under such regulations as the Secretary of the Treasury may prescribe. A certificate of such maceration, signed by the parties so appointed, shall be made in the books of the Comptroller, and a duplicate thereof forwarded to the association whose notes are thus cancelled.

Maceration substituted for burning by Act of June 23, 1874.

§ **5185.** [U. S. Comp. Stat. 1901, p. 3482.] Associations may be organized in the manner prescribed by this Title for the purpose of issuing notes payable in gold; and upon the deposit of any United States bonds bearing interest payable in gold with the Treasurer of the United States, in the manner prescribed for other associations,

it shall be lawful for the Comptroller of the Currency to issue to the association making the deposit circulating notes of different denominations, but none of them of less than five dollars, and not exceeding in amount eighty per centum of the par value of the bonds deposited, which shall express the promise of the association to pay them, upon presentation at the office at which they are issued, in gold coin of the United States, and shall be so redeemable. But no such association shall have a circulation of more than one million of dollars.

See Act of January 19, 1875, *post.*

§ **5186.** [U. S. Comp. Stat. 1901, p. 3483.] Every association organized under the preceding section shall at all times keep on hand not less than twenty-five per centum of its outstanding circulation, in gold or silver coin of the United States; and shall receive at par in the payment of debts the gold notes of every other such association which at the time of such payment is redeeming its circulating notes in gold coin of the United States, and shall be subject to all the provisions of this Title; *Provided,* That in applying the same to associations organized for issuing gold notes, the terms "lawful money" and "lawful money of the United States" shall be construed to mean gold or silver coin of the United States; and the circulation of such association shall not be within the limitation of circulation mentioned in this Title.

§ **5187.** [U. S. Comp. Stat. 1901, p. 3484.] No officer acting under the provisions of this Title shall countersign or deliver to any association, or to any other company or person, any circulating notes contemplated by this Title, except in accordance with the true intent and meaning of its provisions. Every officer who violates this section shall be deemed guilty of a high misdemeanor, and shall be fined not more than double the amount so countersigned and delivered, and imprisoned not less than one year and not more than fifteen years.

§ **5188.** [U. S. Comp. Stat. 1901, p. 3484.] It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use, any business or professional card, notice, placard, circular, hand-bill, or advertisement, in the likeness or similitude of any circulating note or other obligation or security of any

banking association organized or acting under the laws of the United States which has been or may be issued under this Title, or any act of Congress, or to write, print, or otherwise impress upon any such note, obligation or security any business or professional card, notice or advertisement, or any notice of advertisement of any matter or thing whatever. Every person who violates this section shall be liable to a penalty of one hundred dollars, recoverable one-half to the use of the informer.

§ **5189.** [U. S. Comp. Stat. 1901, p. 3484.] Every person who mutilates, cuts, defaces, disfigures, or perforates with holes, or unites or cements together, or does any other thing to any bank-bill, draft, note, or other evidence of debt, issued by any national banking association, or who causes or procures the same to be done, with intent to render such bank-bill, draft, note, or other evidence of debt unfit to be reissued by said association, shall be liable to a penalty of fifty dollars, recoverable by the association.

CHAPTER III

Regulations of the Banking Business

§ **5190.** [U. S. Comp. Stat. 1901, p. 3486.] The usual business of each national banking association shall be transacted at an office or banking-house located in the place specified in its organization certificate.

See Act of May 1, 1886, *post*.

1. This section does not prevent the transaction away from the banks of such of its business as is unavoidably done at some other and proper place than its office; *e. g.*, it does not prevent the purchase of coin by one bank at the banking-house of another, or the certification of a check by the cashier of one bank at the office of another. Merchants' Bank *v.* State Bank, 10 Wall. 651, 19 L. ed. 1020.

2. A bank's certificate of organization designating its place of business determines its locality. It can have no other. Cooke *v.* State National Bank, 52 N. Y. 96, 11 Am. Rep. 667.

3. "The general business of an officer of a national bank is to be transacted at its regular place of business. At the same time, we know that in the course of business between banks occasionally the officers do give instructions away from the place of business of the bank." If the bank doing such business sends a statement of the same to the other bank, and it, through its proper officer, recognizes the validity of the same, it is bound by such recognition. DRUMMOND, J., in Burton *v.* Burley, 12 Chic. Leg. N. 178.

4. Under this section it is not competent for a national bank to provide for the cashing of checks upon it at any other place than at its office or banking-house. Armstrong *v.* Second Nat. Bank of Springfield, 38 Fed. Rep. 883.

5. A national bank, independently of section 5190, Revised Statutes, is not under its charter authorized to establish a branch bank or co-ordinate office for the purpose of carrying on a general banking business in the place designated in its certificate of organization.

Section 5190, Revised Statutes, properly construed, restricts the carrying on of the general banking business by a national bank to one office or banking house in the place designated in the association's certificate of organization. Opin. U. S. Atty. Gen'l, May 11, 1911.

§ 5191. [U. S. Comp. Stat. 1901, p. 3486.] Every national banking association in either of the following cities: Albany, Baltimore, Boston, Cincinnati, Chicago, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburgh, Saint Louis, San Francisco and Washington, shall at all times have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of the aggregate amount of its notes in circulation, and its deposits; and every other association shall at all times have on hand in lawful money of the United States, an amount equal to at least fifteen per centum of the aggregate amount of its notes in circulation, and of its deposits. Whenever the lawful money of any association in any of the cities named shall be below the amount of twenty-five per centum of its circulation and deposits, and whenever the lawful money of any other association shall be below fifteen per centum of its circulation and deposits, such association shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at

sight, nor make any dividend of its profits until the required proportion, between the aggregate amount of its outstanding notes of circulation and deposits and its lawful money of the United States, has been restored. And the Comptroller of the Currency may notify any association, whose lawful-money reserve shall be below the amount above required to be kept on hand, to make good such reserve; and if such association shall fail for thirty days thereafter so to make good its reserve of lawful money, the Comptroller may, with the concurrence of the Secretary of the Treasury, appoint a receiver to wind up the business of the association, as provided in section fifty-two hundred and thirty-four.

(This section 5191 was modified by section 14 of Act of May 30, 1908, *post.* Section 27 of Federal Reserve Act, *post,* re-enacts above section 5191 as it was prior to May 30, 1908, and the text above is as prior to May 30, 1908.)

See Act of June 20, 1874, § 2, *post.*

See Act of July 12, 1882, § 12, *post.*

See section 19, Federal Reserve Act, *post.*

Where the appointment of a receiver of a national bank by the Comptroller requires the concurrence of the Secretary of the Treasury, the appointment is, in law, equivalent to an appointment by the Treasurer, and the receiver so appointed is, therefore, an officer of the United States and not of the court, and as such is entitled to bring suits at common law in the United States courts, under the provisions of the Act of Congress of March 3, 1815. Platt, Receiver, *v.* Beach, 2 Benedict, 317.

§ 5192. [U. S. Comp. Stat. 1901, p. 3487.] Three-fifths of the reserve fifteen per centum required by the preceding section to be kept may consist of balances due to an association, available for the redemption of its circulating notes from associations approved by the Comptroller of the Currency, organized under the act of June three, eighteen hundred and sixty-four, or under this Title, and doing business in the cities of Albany, Baltimore, Boston, Charleston, Chicago, Cincinnati, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburgh, Richmond, Saint Louis, San Francisco and Washington. Clearing-house certificates, representing specie or lawful money specially deposited for the purpose, of any clearing-house association, shall also be deemed to be lawful money in the possession of any association belonging to such clearing-house, holding and owning such certificate, within the preceding section.

See Act of June 20, 1874, § 3, *post;* Act of March 3, 1887, *post;* Act of March 3, 1903, *post;* section 19, Federal Reserve Act, *post.*

§ 5193.

(Repealed by Act of March 14, 1900, § 6. Currency Act of 1900, *post.*)

§ 5194. [U. S. Comp. Stat. 1901, p. 3492.] *The power conferred on the Secretary of the Treasury by the preceding section shall not be exercised so as to create any expansion or contraction of the currency. And United States notes for which certificates are issued under that section, or other United States notes of like amount, shall be held as special deposits in the Treasury, and used only for the redemption of such certificates.*

Superseded by Act of March 14, 1900, § 6, *post.*

§ 5195. [U. S. Comp. Stat. 1901, p. 3492.] Each association organized in any of the cities named in section fifty-one hundred and ninety-one shall select, subject to the approval of the Comptroller of the Currency, an association in the city of New York, at which it will redeem its circulating notes at par; and may keep one-half of its lawful-money reserve in cash deposits in the city of New York. But the foregoing provisions shall not apply to associations organized and located in the city of San Francisco for the purpose of issuing notes payable in gold. Each association, not organized within the cities named, shall select, subject to the approval of the Comptroller, an association in either of the cities named, at which it will redeem its circulating notes at par. The Comptroller shall give public notice of the names of the associations selected, at which redemptions are to be made by the respective associations, and of any change that may be made of the association at which the notes of any association are redeemed. Whenever any association fails either to make the selection or to redeem its notes as aforesaid, the Comptroller of the Currency may, upon receiving satisfactory evidence thereof, appoint a receiver in the manner provided for in section fifty-two hundred and thirty-four to wind up its affairs. But this section shall not relieve any association from its liability to redeem its circulating notes at its own counter, at par, in lawful money on demand.

See Act of June 20, 1874, § 3, *post;* as to repeal in part. See Act of March 3, 1887, *post;* Act of March 3, 1903, *post.*

§ 5196. [U. S. Comp. Stat. 1901, p. 3492.] Every national bank-

ing association formed or existing under this Title shall take and receive at par, for any debt or liability to it, any and all notes or bills issued by any lawfully organized national banking association. But this provision shall not apply to any association organized for the purpose of issuing notes payable in gold.

§ **5197.** [U. S. Comp. Stat. 1901, p. 3493.] Any association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, and no more, except that where by the laws of any State a different rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State, under this Title. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. And the purchase, discount, or sale of a *bona fide* bill of exchange, payable at another place than the place of such purchase, discount or sale, at not more than the current rate of exchange or sight-drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

1. This section is an enabling and not a restraining one, except so far as it fixes a maximum rate in all cases where State banks of issue are not allowed a greater. Tiffany *v.* National Bank of Missouri, 18 Wall. 411, 21 L. ed. 862.

2. It allows to national banks the rate allowed to natural persons generally, and the same rate as allowed to State banks even where the latter are allowed a higher rate than natural persons. Id.

3. The sole particular in which national banks are placed on an equality with natural persons is as to the rate of interest they may charge, and not as to the character of the contracts they are authorized to make, so that if in any State a natural person may discount paper without regard to any rate of interest fixed by law, the same privilege is not extended by virtue of this section to national banks. The privilege only extends to charging the rate allowed by the State law to natural persons, and the rate thus fixed is applicable to both loans and discounts. National Bank *v.* Johnson, 104 U. S. 271, 26 L. ed. 742. In New York State the statutory rate for the use of money (*i. e.*, on loans) was seven (now six) per centum, but there is no rate fixed for the discount of commercial paper. Accordingly the National Bank of Gloversville, N. Y. (plaintiff in error, in the case just mentioned), relying on the latter fact, discounted notes amounting to $158,003 (being mostly commercial or business paper) for one Johnson at the rate of twelve per cent., or $6,564.88, being

an excess of $2,735.36 beyond what the interest would have amounted to computed at the legal rate. The notes were paid at maturity. Subsequently Johnson sued the bank to recover under this and the following section (5198, U. S. Comp. Stat. 1901, p. 3493) the penalties therein prescribed for a violation of their provisions, viz., twice the amount of the interest paid in excess of the legal rate (seven per cent.), and had judgment as prayed for, amounting to $5,470.72. On appeal to the New York Court of Appeals (74 N. Y. 329, 30 Am. Rep. 302), that court in affirming the judgments of the lower courts held, that the object of this section was to limit the rate to be charged upon discounts as well as upon loans, and this rate is limited to the rate of interest fixed by the State law for interest for the use of money, "and not the rate fixed by such law for the discount of commercial paper. If, however," the court said, "it should be deemed to refer to the rates fixed for discounts, as well as for the use of money, then as there is no rate fixed in this State for such discounts, the provision of the Act of Congress (see this section), that where no rate is fixed by the laws of the State, the banks may take a rate not exceeding seven per cent. would apply." The court further said, "that the framers of the act understood that it applied to the discount of business as well as accommodation paper, is apparent from the concluding provision of (this) section 5197, U. S. Comp. Stat. 1901, p. 3493." On appeal to the United States Supreme Court the judgment was affirmed. National Bank *v.* Johnson, above quoted. The case in the Court of Appeals was also approved in Atlantic State Bank *v.* Savery, 82 N. Y. 291.

4. State laws relative to usury do not apply to national banks. Farmers' and Mechanics' National Bank *v.* Dearing, 1 Otto, 29, 23 L. ed. 196.

5. The purchase of accepted drafts by a national bank from the holder without his indorsement at a greater reduction than lawful interest on their face value is a discounting of the drafts within the meaning of this section. Danforth *v.* Nat. St. Bank of Elizabeth, 17 L. R. A. 622, 1 U. S. Circuit Ct. of Appeals R. 62, 3 U. S. App. 7, 48 Fed. 271.

§ 5198. [U. S. Comp. Stat. 1901, p. 3493.] The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same; provided such action is commenced within two years from the time the usurious transaction occurred. That suits, actions and proceedings against any association under this Title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which said association is located, having jurisdiction in similar cases.

(As amended by Act of February 18, 1875.)

See section 9 of Federal Reserve Act, *post.*

1. As to jurisdiction of the courts, consult proviso in section 4, Act of July 12, 1882, also Act of March 3, 1887, *post.*

2. This section, prescribing a penalty for usury, must be strictly construed. Tiffany *v.* National Bank, 18 Wall. 409, 21 L. ed. 862.

3. The penalty imposed by this section, where the greater rate of interest has been paid, can only be recovered in a suit brought specially and exclusively for that purpose. That the borrower from a national bank has in that, or in previous transactions with the same bank, paid a usurious rate of interest, can avail him nothing as a defense or by way of set-off or counterclaim, when sued by the bank for the amount of the loan. Barnett *v.* National Bank, 98 U. S. (8 Otto) 555, 25 L. ed. 212.

4. The National Banking Act does not declare the contract under which usurious interest is paid to be void. Hence, where a borrower from a national bank at a usurious rate indorses before maturity a note of a third person held by him (borrower) to the bank as collateral security, for the court to hold the contract of indorsement void (at the instance of the third person or borrower) would be adding a penalty to that imposed by the act, which the court has no power to do. Oates *v.* National Bank, 100 U. S. (10 Otto) 250, 25 L. ed. 585. As to the validity of such contracts outside the National Banking Act, where no penalty is prescribed, see Tiffany *v.* Boatmen's Savings Institution, 18 Wall. 375, 21 L. ed. 868.

5. The right of action to recover the penalty prescribed by this section is a "claim" or "debt," which passes to an assignee in bankruptcy, who is the "legal representative" of the bankrupt in whose favor it has accrued, within the meaning of this section. Wright *v.* First National Bank, 8 Bissell, 243, Fed. Cas. No. 18,078.

6. The discount of a note by a national bank at a usurious rate works a forfeiture of such interest as would otherwise have accrued after the maturity of the note. First National Bank *v.* Stauffer, 1 Fed. Rep. 187. This section was amended by the Act of February 18, 1875, *post*, by adding a sentence providing in what courts suits, etc., may be brought.

7. The National Banking Act is to be liberally construed to effect the ends for which it was passed; but a forfeiture under its provisions should not be declared, unless the facts upon which it must rest are clearly established, as when a bank discounts bills of exchange payable elsewhere, and in a suit brought thereupon by the bank the defense of usury is set up, it should appear affirmatively that the bank knowingly received or reserved an amount in excess of the statutory rate of interest and the current exchange for sight drafts; and where, in such case, it is proven that a certain rate of exchange was charged in addition to the legal rate of interest, but not that such exchange was in excess of the current rate at the time of discount. Held, insufficient to authorize a forfeiture. Wheeler *v.* National Bank, 96 U. S. 268, 24 L. ed. 833.

8. Under this section suits may be brought "by" as well as "against" national banks. The word "by" omitted by mistake. Kennedy *v.* Gibson, 8 Wall. 505, 19 L. ed. 478.

9. National banks may, by reason of their character, sue in the Federal courts. First National Bank of Omaha *v.* Douglass County, 3 Dillon, 299, Fed. Cas. No. 4,809. This decision seems to be overruled by section 4 of Act of Congress of July 12, 1882, *post.* See also Union National Bank *v.* Miller, 15 Fed. Rep. 703, in which

case it was held that the effect of the said act (section 4) "is to place national and other banks, in respect to their rights to sue in the Federal courts, on the same footing." That a national bank cannot, therefore, in virtue of any corporate right, sue in a Federal court. But as to right of removal into Federal courts, by national banks, or suits begun by or against them in State courts, see section 2 of Act of Congress of March 3, 1875. The decision in Cruikshank *v.* Fourth National Bank, 21 Blatchf. 322, 16 Fed. 888, construing said section, practically gives to these banks the right to remove every such suit into the Federal courts.

10. The provisions of this section, respecting the jurisdiction of State courts in actions (by or) against national banks, was intended as a restriction on the general provision in regard to jurisdiction in subdivision 4 of section 5136, U. S. Comp. Stat. 1901, p. 3455, by confining the jurisdiction of such actions to the State, county or municipal court in the county or city in which the association is located. Cadle *v.* Tracy, 11 Blatchf. 115, Fed. Cas. No. 2,279. See also to same effect, Crocker *v.* Marine National Bank, 101 Mass. 240, 3 Rep. 336, and *contra,* Cooke *v.* State National Bank, 52 N. Y. 96, 11 Am. Rep. 667. The decision (11 Blatchf.) seems to be overruled by Act of Congress of July 12, 1882, *post.*

11. A national bank cannot be sued in the United States District Courts outside of the district where it is located. Main *v.* Second National Bank, 6 Bissell, 26, Fed. Cas. No. 8,976.

12. National banks are not authorized to sue in the Federal courts out of the district in which they are located, when the amount in controversy does not exceed $500. St. Louis National Bank *v.* Brinkham, 1 McCrary, 9, 1 Fed. 45.

13. This section relates to transitory actions only, and not to such actions as are by law local in their character. It was not the intention of Congress to exempt banks from the ordinary rules of law, affecting the locality of actions. Hence a national bank can be sued in a State court, in a local action, in any other county or city than that where the bank is located. Casey *v.* Adams, 102 U. S. (12 Otto) 66, 26 L. ed. 52. In Cruikshank *v.* Fourth National Bank, above cited, it was held that a suit against a national bank in a case arising under the laws of the United States, within the meaning of section 2 of Act of March 3, 1875, in regard to the removal of suits. WALLACE, J., in his decision, stating that he did not believe that the judgments to the contrary, in the cases of Pettilon *v.* Noble, 7 Bissell, 449, Fed. Cas. No. 11,044, and Wilder *v.* Union National Bank, 9 Biss. 178, Fed. Cas. No. 17,651, are a correct exposition of the section. In Union National Bank *v.* Miller, above cited, the court, after stating the effect of section 4 of Act of July 12, 1882, to be the placing "of national and other banks, in respect to their right to sue, in the Federal courts on the same footing," says, "but like other banks and citizens, it (national bank) may thus sue (in Federal courts) whenever the subject-matter of litigation involves some element of Federal jurisdiction, of which a Federal court may, under the law, take judicial cognizance." But in Osborn *v.* Bank of United States, 9 Wheat. 738, 6 L. ed. 204, it was decided "that any suit brought by a corporation created by Congress, was one arising under the laws of the United States, although the questions upon which its (court's) decision might depend were to be solved by the general principles of common law or equity, because the law of Congress, which created the corporation, . . . was of necessity an ingredient in the case." See Cruikshank *v.* Fourth National Bank, above cited. Thus it would seem that every action by or against a national bank, in a State court, may be removed at the option of the bank into the Federal courts.

14. "The acceptor of a draft purchased by way of discount by a national bank at a greater reduction than lawful interest may defend against the recovery of interest thereon by the bank under this section, for the section destroys the interest bearing power of the instrument." Danforth *v.* Nat. Bank of Elizabeth, 17 L. R. A. 622, 1 U. S. Circuit Ct. of Aps. Rep. 62, 3 U. S. App. 7, 48 Fed. 271.

15. A suit against a national bank to recover back twice the amount of interest illegally taken by it is a suit to recover a penalty incurred under a law of the United States. First Nat. Bank of Charlotte *v.* Morgan, 132 U. S. 141, 33 L. ed. 282, 13 Sup. Ct. Rep. 37. See First Nat. Bank of Springfield *v.* Haulenbeek, 65 Hun, 54, 19 N. Y. Supp. 567.

16. The effect of Kentucky usury law on national bank loans examined. Brown *v.* Marion Nat. Bank, 169 U. S. 418, 42 L. ed. 802, 18 Sup. Ct. Rep. 390.

17. The interest that may be recovered by debtor who has paid usurious interest is twice the entire amount of interest, and not twice the excess over lawful interest. Lake Benton Nat. Bank *v.* Watt, 184 U. S. 151, 46 L. ed. 475, 22 Sup. Ct. Rep. 457.

18. State laws regulate the charging of interest by national banks. Union Nat. Bank *v.* Louisville R. R. Co., 163 U. S. 331, 41 L. ed. 178, 16 Sup. Ct. Rep. 1039.

19. Excessive interest whether deducted by a court or surrendered before litigation is not excessive interest paid within R. S., § 5198, U. S. Comp. Stat. 1901, p. 3493. Talbot *v.* First Nat. Bank, 185 U. S. 180, 46 L. ed. 861, 22 Sup. Ct. Rep. 612.

20. Where territorial law allows more than seven per cent. interest under R. S. 5197, 5198, under special agreement it is permissible. Daggs *v.* Phœnix Nat. Bank, 177 U. S. 549, 44 L. ed. 882, 20 Sup. Ct. Rep. 732.

21. The remedies and penalties in § 5198, are exclusive, and there can be no set-off by maker of note for usurious interest previously paid for renewals. Haseltine *v.* Central Bank, 183 U. S. 136, 46 L. ed. 120, 22 Sup. Ct. Rep. 50.

22. See also editorial note to Citizens' Nat. Bank *v.* Gentry, 56 L. R. A. 673, on forfeiture or other effect of taking and reserving illegal interest by national bank, containing a full presentation of the authorities on that question.

23. These sections (5198, 5197) limiting the rate of interest and superseding State laws are a valid exercise of Federal power. Schlesinger *v.* Gilhooly, 189 N. Y. 1.

24. A national bank which compounds interest in a way prohibited by the State law, forfeits all interest even though the total interest is less than the maximum rate permitted by that State. Remitting excessive interest later will not relieve from the forfeiture. Citizens' Nat. Bank *v.* Donnell, 195 U. S. 369.

25. The payment referred to in this section is an actual payment and not a promise to pay, and a renewed note will not sustain a recovery against a bank on account of usurious interest in the former note. First Nat. Bank *v.* Lasater, 196 U. S. 115.

26. A national bank, if an innocent holder for value, can receive the principal of a bond and mortgage, although tainted by usury. Slade *v.* Squier, 133 App. Div. 666.

§ 5199. [U. S. Comp. Stat. 1901, p. 3494.] The directors of any association may, semi-annually, declare a dividend of so much of the net profits of the association as they shall judge expedient; but each association shall, before the declaration of a dividend, carry one-tenth

part of its net profits of the preceding half-year to its surplus fund, until the same shall amount to twenty per centum of its capital stock.

1. When a dividend has once been declared, the directors cannot afterward refuse to pay it, because they have determined to establish a surplus fund with a view to benefit the corporation and its stockholders. The dividend, when declared, becomes a debt, and cannot thenceforth be disposed of without the consent of him who is entitled to it. Beers *v.* Bridgeport Spring Company, 2 N. Y. Week. Dig. 8. In connection with this last statement, see also Seeley *v.* New York National Exchange Bank, 4 Abb. N. C. 66.

2. A national bank has the right to hold a cash dividend as pledged for the indebtment of the shareholder to the bank. It may also attach the shares of a stockholder therein for his debt due the bank. Hagar *v.* Union National Bank, 63 Me. 509.

§ 5200. The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such associations, actually paid in and unimpaired and one-tenth part of its unimpaired surplus fund: *Provided, however,* That the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the association. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed.

(As amended June 22, 1906.)

See section 9 of Federal Reserve Act, *post.*

1. A loan made by a national bank in excess of the restriction imposed by this section is not void on that account. "When a statute prohibits an act, or annexes (as in this case) a penalty for its commission, it does not follow that the unlawfulness of the act was meant to avoid a contract made in contravention of it." HUNT, J. Even though the loan were voidable, it seems the borrower, after obtaining and holding to his own use the money, cannot be allowed to interpose the plea that the bank had no right to loan the money. Gold Mining Company *v.* National Bank, 96 U. S. 640, 24 L. ed. 648.

2. Where a national bank loans money in excess of the restriction contained in this section and takes collateral security therefor, the contract being executed, the bank acquires an absolute or qualified title to the securities, and the borrower cannot recover the latter without returning the loan, even though the contract were illegal and void. Shoemaker *v.* National Mechanics' Bank, 31 Md. 396, 100 Am. Dec. 73.

3. In a suit by a national bank against an indorsee on notes discounted for the drawer's accommodation, where the defense set up was, that, at the time of the discount, the drawer was indebted to the bank for money lent in excess of one-tenth of its capital, and that the loan was, therefore, void under this section. In holding to

the contrary, the court said, "that the fact of the excess of indebtedness, and the bank's knowledge of the fact, was only collateral to the contract of discount and not presumed to be within the knowledge of the borrower, and the note was not intended by both parties to be the instrument of committing a fraud upon the law." The court further said, the section "was intended as a general rule for conducting the business of the bank." O'Hare *v.* Second National Bank, 77 Pa. 102.

4. Directors who assent to a loan to one person of an amount exceeding one-tenth of the capital stock of the bank are personally liable for all loss sustained thereby. But where the borrower is in the case of such excessive loan also a director he is liable only as an ordinary debtor to the bank. Witters, Receiver, *v.* Sowles *et al.*, 31 Fed. Rep. 1.

5. Where a national bank lends an amount in excess of that allowed by above section, the borrower cannot avail himself of the statute as a defense to the note. The penalty can only be enforced by the United States. Such a loan is not void. Wyman *v.* National Bank, 29 Fed. Rep. 734.

6. By virtue of section 5239 in case of an excessive loan the Comptroller may, if he thinks proper, proceed to have the charter revoked, and whether he does so or not a director who knowingly participates in or assents to the loan may be compelled to make good whatever damage results to the bank from making the same. Stephens *v.* Overstoltz, 43 Fed. Rep. 771. See Nat. Exch. Bank *v.* Peters, 44 Fed. Rep. 13.

7. The action to recover against a director may be at law; there is no necessity of resorting to equity. Id. See also Nat. Exch. Bank *v.* Peters, 44 Fed. Rep. 13. The action does not abate with the death of the director, but survives against his personal representatives. Id.

8. The personal liability of a director under this section cannot be enforced in an action at law. Welles *v.* Graves, 41 Fed. Rep. 459.

§ 5201. [U. S. Comp. Stat. 1901, p. 3494.] No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section fifty-two hundred and thirty-four.

(See section 9 of Federal Reserve Act, *post.*)

1. A deposit by one bank with another is a loan; and where, at the time of making the deposit, the depositor takes a pledge of its own shares as security for the deposit then made, and for future deposits, the transaction, as to national banks, is illegal, as coming within the prohibition of this section. Bank *v.* Lanier (citing Bridgeport Bank *v.* Schuyler, 34 N. Y. 30) 11 Wall. 369, 20 L. ed. 172.

2. Loans by national banks to their stockholders do not give a lien to the former on the stock of the latter. Id.

3. A national bank issued two certificates of stock to C., wherein it was declared that he was entitled to 150 shares of the institution, and that these shares were transferable on the books of the bank, in person or by attorney, only on the surrender of the certificate. L. & H. purchased 138 of these shares of C. for value, and received the certificate regularly assigned. The bank refused to transfer the stock on the books, on the ground that the shares had been pledged to it by C. as security for deposits made by it with him, and had already sold and transferred to other parties under a power of attorney from C. before the bank had notice of L. and H.'s purchase. L. and H. sued to obtain damages. Held, that the action would lie, and that the pledge of the stock by C. to the bank being illegal, the previous transfer was no defense. Id.

4. National banks cannot acquire a valid lien upon the shares of their stockholders by virtue of the articles of association or by-laws, even when constructed and adopted for the express purpose. Congress intended, by leaving out of the Act of 1864 section 36 of the Act of 1863 (restricting a shareholder from transferring his stock so long as he owned the bank), to relieve shareholders from the restriction imposed by that section. The policy on the subject was changed, and banks were thereafter required to deal with their shareholders as they dealt with other people. Bullard *v.* Bank, 18 Wall. 589, 21 L. ed. 923. This decision overrules Dunkerson's Case, 4 Biss. 227, Fed. Cas. No. 4,156, and Knight *v.* Bank of Providence, 4 Am. Law T. 240, Fed. Cas. No. 7,885.

5. "Inasmuch as this act in express terms prohibits a national bank from thus becoming a 'purchaser of the shares of its own capital stock' (R. S., § 5201), if L. had made a contract to sell his shares to the bank, or to its president for the bank, it is plain that such a contract would have been *extra vires* and illegal, both as respects creditors and other shareholders, and the transaction could have been impeached by the bank in its corporate capacity, or by its other shareholders, even if the bank were still solvent and going on, by the receiver as the officer appointed to wind up its affairs. *Re* London, etc., Exchange Bank, Law Rep. 5 Ch. App. 149; Currier *v.* Lebanon Slate Co., 56 N. H. 262. And although L. did not contract to sell his shares directly to the bank, or to the president for the bank, still, if, before the transaction was completed as to him, he had notice, actual or constructive, that the purchase was in fact a purchase for the bank, and paid for by the money of the bank, the transaction cannot stand; and the receiver may compel him to pay back the money thus received, and have him declared still to be a shareholder." DILLON, J., Johnson *v.* Laffin, 17 Alb. Law J. 146, Fed. Cas. No. 7,393, affirmed 103 U. S. 803, 26 L. ed. 534.

6. This section implies a "restriction on the shareholder from selling his own shares to the bank itself, or to a known trustee of the bank. And a shareholder cannot transfer his shares colorably, and thereby cease to be a shareholder as respects creditors and other shareholders who would be injured by such transfer. There may also be an implied prohibition against the right to transfer shares to an infant or person not capable in law of assuming the liabilities, as well as enjoying the rights of the transfer, or the shares in respect thereto, but we have no occasion to determine this point. Rev. Stat., § 5139, compare id., § 5152. Weston's Case, Law Rep. 5 Ch. App. 614, 621. And on general principles, there may also be an implied prohibition against the transfer of shares to a pauper, or man of straw, or insolvent person, for the fraudulent purpose of escaping liability, but this is a matter that need not be now considered." Id.

7. The provisions of this section do not forbid the attachment by a national

bank of any of its shares, "unless it shall be necessary to prevent loss," etc. The attachment or sale on execution of shares does not imply a purchasing or holding on the part of the creditor. Hagar *v.* Union Nat. Bank, 63 Me. 509.

8. The prohibition in Act of 1864 against loans by national bank on its own capital stock is violated by a by-law creating a lien on shares of all stockholders owing the bank and forbidding transfer of such stock without consent of directors. Such a by-law even if printed on stock certificate cannot legally prevent a transfer of stock to a purchaser for value in good faith. Buffalo German Ins. Co. *v.* Third Nat. Bank of Buffalo, 162 N. Y. 163, 48 L. R. A. 107, 56 N. E. 521, 192 U. S. 581.

§ 5202. No national banking association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses, or otherwise, except on account of demands of the nature following:

First. Notes of circulation.

Second. Moneys deposited with or collected by the association.

Third. Bill of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

Fourth. Liabilities to the stockholders of the association for dividends and reserve profits.

Fifth. Liabilities incurred under the provisions of the Federal Reserve Act.

(As amended by Federal Reserve Act, § 13, *post.*) See last paragraph thereof.

1. In fixing the limitation of a national bank's indebtedness hereunder, it was intended to exclude from the amount of said indebtedness, liabilities upon circulating notes, accounts for deposits and for moneys collected, bills of exchange drawn against actual credit and surplus accumulations belonging to stockholders. The incurring of liabilities for other purposes equal to the entire capital is not a defence to a creditor's suit. Weber *v.* Spokane Nat. Bank, 64 Fed. Rep. 208.

§ 5203. [U. S. Comp. Stat. 1901, p. 3495.] No association shall, either directly or indirectly, pledge or hypothecate any of its notes of circulation, for the purpose of procuring money to be paid in on its capital stock, or to be used in its banking operations, or otherwise; nor shall any association use its circulating notes, or any part thereof, in any manner or form to create or increase its capital stock.

§ 5204. [U. S. Comp. Stat. 1901, p. 3495.] No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of

dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any associations on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under section fifty-one hundred and forty-three.

See, in connection with above, Johnson, Receiver, *v.* Lafflin, 17 Alb. L. J. 146, Fed. Cas. No. 7,393, aff'd 103 U. S. 803, 26 L. ed. 534.

Directors are not personally liable for money paid out as dividends in violation of above section, where the "bad debts" at the time of paying such dividends were supposed to be collectible. Bad judgment in this respect if not joined with bad faith will not make such directors personally liable. Witters, Receiver, *v.* Sowles *et al.*, 31 Fed. Rep. 1.

The personal liability of a director under this section cannot be enforced in an action at law. Wells *v.* Graves, 41 Fed. Rep. 459.

§ **5205.** [U. S. Comp. Stat. 1901, p. 3495.] Every association which shall have failed to pay up its capital stock, as required by law, and every association whose capital stock shall have become impaired by losses or otherwise, shall, within three months after receiving notice thereof from the Comptroller of the Currency, pay the deficiency in the capital stock, by assessment upon the shareholders *pro rata* for the amount of capital stock held by each; and the Treasurer of the United States shall withhold the interest upon all bonds held by him in trust for any such association, upon notification from the Comptroller of the Currency, until otherwise notified by him. If any such association shall fail to pay up its capital stock, and shall refuse to go into liquidation, as provided by law, for three months after receiving notice from the Comptroller, a receiver may be appointed to close up the business of the association, according to the provisions of section fifty-two hundred and thirty-four. [*And provided,* That if any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such

shareholder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto), to make good the deficiency; and the balance, if any, shall be returned to such delinquent shareholder or shareholders.]

Matter in brackets added by Act June 30, 1876, § 4, *post.*

When sued by the receiver upon an assessment made by the Comptroller, the stockholder cannot deny the validity of the creation of the bank, nor question the decision of the Comptroller as to a deficiency of assets, nor show that the proceedings prior to the making of the assessment were irregular. Casey *v.* Galli, 94 U. S. 673, 24 L. ed. 168; Olean National Bank *v.* Carll, 7 Hun, 237.

See notes to section 5151, *ante.*

§ **5206.** [U. S. Comp. Stat. 1901, p. 3496.] No association shall at any time pay out on loans or discounts, or in purchasing drafts or bills of exchange, or in payment of deposits, or in any other mode pay or put in circulation, the notes of any bank or banking association which are not, at any such time, receivable, at par, on deposit, and in payment of debts by the association so paying out or circulating such notes; nor shall any association knowingly pay out or put in circulation any notes issued by any bank or banking association which at the time of such paying out or putting in circulation is not redeeming its circulation notes in lawful money of the United States.

§ **5207.** [U. S. Comp. Stat. 1901, p. 3496.] No association shall hereafter offer or receive United States notes or national bank-notes as security or as collateral security for any loan of money, or for a consideration agree to withhold the same from use, or offer or receive the custody or promise of custody of such notes as security, or as collateral security or consideration for any loan of money. Any association offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be fined not more than one thousand dollars and a further sum equal to one-third of the money so loaned. The officer or officers of any association who shall make any such loan shall be liable for a further sum equal to one-quarter of the money loaned; and any fine or penalty incurred by a violation of this section shall be recoverable for the benefit of the party bringing such suit.

§ 5208. [U. S. Comp. Stat. 1901, p. 3497.] It shall be unlawful for any officer, clerk, or agent of any national banking association to certify any check drawn upon the association unless the person or company drawing the check has on deposit with the association, at the time such check is certified, an amount of money equal to the amount specified in such check. Any check so certified by duly authorized officers shall be a good and valid obligation against the association; but the act of any officer, clerk, or agent of any association, in violation of this section, shall subject such bank to the liabilities and proceedings on the part of the Comptroller as provided for in section fifty-two hundred and thirty-four.

See Act of July 12, 1882, § 13, *post.*

See sections 9 and 17 of Federal Reserve Act, *post.*

1. This section does not invalidate a promise on the part of a national bank to pay a check, when the drawer shall have funds for the purpose in its possession; *e. g.*, whenever a draft left with it for collection by the drawer, and sufficient in amount for the purpose, shall have been paid. National Bank *v.* National Bank, 7 W. Va. 549.

2. A violation of section 5208 by a national bank by over-certifying checks does not preclude the bank from enforcing its claim out of collateral pledged to secure the indebtedness of the drawer of the check. Thompson *et al.* *v.* National Bank, 47 Hun, 621.

3. The fact that a national bank which agreed to pay certain checks of a customer upon receiving collateral security, subsequently certified such checks for the holder thereof, although in excess of the amount held on deposit for such customer in violation of this section, will not authorize the owners of such collateral to repudiate the advances and recover the securities unaffected by the lien. Thompson *v.* The St. Nicholas Nat. Bank, 113 N. Y. 325, 21 N. E. 57; aff'g 47 Hun, 621.

4. Where a national bank certifies a check for a depositor on the faith of bonds left with it as collateral security for loans notwithstanding the drawer has not sufficient funds on deposit to equal the amount of the check, the check so certified is a good and valid obligation against the bank, and the title of the bank to the bonds is not impaired although the certification was unlawful. Thompson *v.* St. Nicholas Bank, 146 U. S. 240, 36 L. ed. 956, 13 Sup. Ct. Rep. 66.

5. When the provisions of the National Banking Act prohibit certain acts by banks or their officers, without imposing any penalty or forfeiture applicable to particular transactions which have been executed, their validity can be questioned only by the United States and not by private parties. Id.

6. Wrongful intent must be shown to obtain conviction. Spurr *v.* U. S., 174 U. S. 734, 43 L. ed. 1152, 19 Sup. Ct. Rep. 812.

§ 5209. [U. S. Comp. Stat. 1901, p. 3497.] Every president, director, cashier, teller, clerk, or agent of any association, who embezzles, abstracts or willfully misapplies any of the moneys, funds, or credits of the

association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of the association, with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person who with like intent aids or abets any officer, clerk or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten.

(See section 9 of Federal Reserve Act, *post.*)

1. Where a president of a bank, charged as a trustee with the administration of the funds of the bank in his hands, converts them to his own use, he embezzles and abstracts them within this section, unless he shows authority for so doing. In the Matter of Van Campen, 2 Ben. 423, Fed. Cas. No. 16,835.

2. Where false entries are made by a clerk in accordance with directions of the president of a bank, this is sufficient to make the president a principal in the offense, and to constitute a making of the entries by him. Id.

3. It was intended in this section, by the use of the word "misapply," to cover cases of unlawful dealing with the funds of a bank by its officers, although without corrupt motive—the word "embezzle" and perhaps the word "abstract" referring to acts done for the actor's benefit as against the bank. Nor do the words "with intent to injure or defraud," coupled with the former, defeat this intention, for while the word "defraud" may be limited to a malicious dealing with property for the personal advantage of the doer, the word "injure" is not of such limited application, and was doubtless inserted to cover cases of misapplication, causing injury to the association, without benefit to the offender. Hence the guilty intent, required by the section, would be shown by proof of general guilty intent involved in the act knowingly committed, and this though it be admitted that no personal pecuniary benefit was anticipated by the actor. Proof of the latter fact may, therefore, be properly rejected. United States *v.* Taintor, 11 Blatchf. 377, Fed. Cas. No. 16,428, concurred in by Woodruff, Blatchford and Benedict, JJ., but see following note.

4. The willful misapplication, made an offense by this section, does not mean acts of official maladministration referred to in section 5239. "It must be a wilful misapplication for the use or benefit of the party charged or of some person or company other than the association, with intent to injure and defraud the association, or some other body corporate or some other natural person." Woods, J., 655, 27 L. ed. 520, 2 Sup. Ct. Rep. 512. Hence the purchase by a bank of its own shares, when not necessary to prevent a loss on a debt due it, is not a criminal misapplication of its funds. United States *v.* Britton, 107 U. S. 668, 27 L. ed. 525, 2 Sup. Ct. Rep. 512.

5. The purchase of stock in violation of section 5201, U. S. R. S., though made with intent to defraud, and by one or more of the officers of the bank named in this section, is not a crime under this section. 107 U. S. 660, 27 L. ed. 520, 2 Sup. Ct. Rep. 512.

6. It is not an offense under this section where an insolvent officer of a national bank procures the directors to discount his note, with an insolvent indorser as security, they knowing the facts, and he using the proceeds of the discount for his own purposes. United States *v.* Britton, 108 U. S. 193, 27 L. ed. 701, 2 Sup. Ct. Rep. 526.

7. Nor would it constitute a criminal misapplication of the funds of a national bank for the president, even though specially charged by the directors with the duty of looking after the deposits of debtors of the bank, and of applying their deposits to the payment of their debts, to allow a depositor, while indebted to the association, to withdraw and assign to another bank his deposit in the first. Id.

8. The directors of a national bank, while they may be subject to a personal liability for damages, are not rendered liable to a criminal prosecution, where they declare a dividend by the association when there are no net profits to pay it. 108 U. S. 199, 27 L. ed. 698, 2 Sup. Ct. Rep. 531.

9. It is competent for a State to protect, by penal enactments, its citizens in their business dealings, whatever they may be, with a national bank, located within its limits. Such an enactment is not predicated on, and has no relation to any law of Congress or offense created thereby, of which State courts have no jurisdiction. State *v.* Tuller, 34 Conn. 280.

10. Hence a penal statute of a State relating to embezzlement by the officers of a bank, applies to officers of a national bank who purloin a special deposit made by one of its customers, but it is inoperative in respect to the embezzlement of the property of the bank by its agents, for which the Act of Congress provides a remedy. Id.

11. The fact that an officer of a national bank is subject to punishment under this section for a breach of trust does not relieve him from liability to punishment for the same act as a larceny at common law, or under State statutes. There is no identity in the character of the two offenses. Exclusive jurisdiction of the one does not exclude jurisdiction of the other. Commonwealth *v.* Barry, 116 Mass. 6.

12. An officer of a national bank who makes false credits in favor of a firm of which he is a member and allows the money represented by such false credits to be drawn out by his partner in pursuance of an agreement with him to that effect, is guilty of a violation of above section. As to the guilt under this section there is no distinction between a loan made for fraudulent purposes, and an application with like fraudulent intent in a form other than a loan. U. S. *v.* Fish, 24 Fed. Rep. 585.

13. Allowing partners to overdraw account with intent to defraud is within the meaning of above section. Id.

14. In an indictment under section 5209, for willfully misapplying funds of a national bank it is not necessary to charge that the funds misapplied have been previously intrusted to defendant. A willful and criminal misapplication may be made by an officer or agent without having previously received them into his manual possession. U. S. *v.* Northway, 120 U. S. 327, 30 L. ed. 664, 7 Sup. Ct. Rep. 580.

15. Directors of a national bank are officers thereof within the meaning of this section. It depends on the circumstances connected with the bank itself whether the teller is an officer or only an employé or clerk. United States *v.* Means, 42 Fed. Rep. 599.

16. It makes no difference whether one or all of the officers of the bank were deceived or were intended to be deceived as to liability under this section. Id.

17. Making actual entry of an actual transaction, however fraudulent the transaction was, is not a false entry under this section "Aiders and abettors" defined. President's duties. Coffin *v.* U. S., 156 U. S. 463, 39 L. ed. 494, 15 Sup. Ct. Rep. 394.

18. The penalty applies to any bank agent making a false entry in a report even if unverified. Cochran *v.* U. S., 157 U. S. 293, 39 L. ed. 706, 15 Sup. Ct. Rep. 628.

19. Violation of this section held to be an "infamous crime." Folsom *v.* U. S., 160 U. S. 122, 40 L. ed. 363, 16 Sup. Ct. Rep. 222.

20. Violation includes false entry made by direction with intent to defraud or deceive and includes false deposit slip. Agnew *v.* U. S., 165 U. S. 52, 41 L. ed. 630, 17 Sup. Ct. Rep. 235.

21 Entries in reports as loans and discounts of overdrafts of customers do not violate this section. Graves *v.* U. S., 165 U. S. 329, 41 L. ed. 734, 17 Sup. Ct. Rep. 393.

22. Under section 5209 which makes it a criminal offense for any officer or agent of a national bank to make any false entry in any book, report, or statement of the association, with intent "to injure or defraud the association, . . . or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association," the making of a false entry, accompanied by an intent either to "injure or defraud" or to "deceive," as defined by the section, constitutes an offense; and a count of an indictment which charges that such a false entry was made with intent to injure or defraud, and also with intent to deceive, charges two offenses, and is bad for duplicity. United States *v.* Norton, 188 Fed. Rep. 256.

23. The cashier of a national bank is chargeable with knowledge of the books of the bank, and on a prosecution for willful misapplication of funds it was not error to allow the contents of the books to be proved. Pearce *v.* U. S., 192 Fed. Rep. 561.

24. Section 5209 provides that every president, director, cashier, teller, clerk, or agent of any national banking association who willfully misapplies any of its funds with intent to injure or defraud the association, and every person who with like intent aids or abets any officer, clerk, or agent in any violation of the section shall be deemed guilty of a misdemeanor. *Held*, that under such section it is proper to join in a single count of the indictment a charge of willful misapplication of the bank's funds by its officers and a charge that the other defendants aided and abetted them therein, and that such joinder did not render the indictment demurrable for duplicity. Prettyman *et al.* *v.* U. S., 180 Fed. Rep. 30.

25. An expert accountant, who is not an attorney at law, appointed by the Attorney General "a special assistant to" a United States attorney to assist in the investigation and prosecution of a particular case is not an "officer of the Department of Justice," within the meaning of Act June 30, 1906 (c. 3935, 34 Stat. 816; U. S. Comp. St. Supp., 1909, p. 48), and can not be authorized by the Attorney General to conduct, or assist in conducting, proceedings before the grand jury in connection with such case, nor to be present in the room during the examination of witnesses, to aid the district attorney by suggestions. United States *v.* Heinze, 177 Fed. Rep. 770.

26. The making of false entries in the books of a national bank is equally an offense, whether it is done by the bank officer charged, or whether he procures it to be done through the medium of others. Richardson *v.* United States, 181 Fed. Rep. 1.

27. A simple mistake by an officer of a national bank in making an entry in one of the company's books, growing out of a clerical error, is not a violation of Revised

Statutes, section 5209, punishing the making of false entries by a bank officer with intent to deceive. United States *v.* Wilson, 176 Fed. Rep. 806.

28. Concealment by the president of a national bank from the bookkeeper of facts necessary to enable the latter to make accurate entries in the books of the bank, by reason of which fact he made false entries, does not constitute the making of false entries by the president which is made a criminal offense by Revised Statutes, section 5209. U. S. *v.* McClarty, 191 Fed. Rep. 523.

29. Accused, who was president of a national bank, having overdrawn his account $18,303.80, executed his note to the bank for $20,000, secured by certain corporate stock, the proceeds of the note being used to cancel the overdraft, and the balance was credited to his account, subject to check. The note not having been paid, the collateral was sold for $5,000 cash, which paid the $1,146 additional advancement and $3,800 on the overdraft. *Held*, that the execution of the note was a benefit and not a loss to the bank, and that accused by that transaction was not guilty of misapplying the bank's funds, in violation of Revised Statutes, section 5209. Adler *v.* U. S., 182 Fed. Rep. 464.

30. Gross maladministration and inexcusable breach of duty on the part of the officers of a national bank in its management, however disastrous to its stockholders, are not punishable unless in violation of Revised Statutes, section 5209. Prettyman *et al.* *v.* U. S., 180 Fed. Rep. 30.

31. As to what are "false entries" see U. S. *v.* Herrig, 204 Fed. Rep. 124.

32. The president of a national bank may be convicted of "aiding and abetting": evidence examined in such case. Kattenbach *v.* U. S., 202 Fed. Rep. 377. See also Phillips *v.* U. S., 201 Fed. Rep. 259.

§ 5210. [U. S. Comp. Stat. 1901, p. 3498.] The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, on the first Monday of July of each year, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency.

See, in connection with above, Johnson, Receiver, *v.* Lafflin, 17 Alb. L. J. 146, Fed. Cas. No. 7,393.

1. The provision that national banks shall keep open for inspection a list of stockholders was intended to give creditors and state officers opportunity for information as to liability of stockholders. Pauly *v.* State Loan Ass'n, 165 U. S. 621, 41 L. ed. 850, 17 Sup. Ct. Rep. 465.

2. A shareholder of a national bank is entitled to examine its list of shareholders and to make extracts therefrom for the purpose of negotiating for the purchase of its

stock. The State corporation laws apply to national banks. People *ex rel.* Lorge *v.* Consol. Nat. Bank, 105 App. Div. 409.

§ **5211.** [U. S. Comp. Stat. 1901, p. 3498.] Every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors.

Each such report shall exhibit in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified; and shall be transmitted to the Comptroller within five days after the receipt of a request or requisition therefrom from him, and in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the Comptroller. The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition.

See Act of February 26, 1881, *post.* See Act of June 30, 1876, *post.*
See section 9 of Federal Reserve Act, *post.*

The President may give to a committee of Congress information in the possession of the Comptroller of the Currency relative to the operation of national banks, if in his opinion, it is proper to do so; but if, in his opinion, the interests of the Government require that this information shall be treated as confidential, he has the right to refuse to divulge it. If the President believes that this information should be obtained and considered by the Comptroller in the performance of his duties, he may direct him to procure it; and after it has been obtained for this legitimate purpose, he may, if he deems it proper, direct the Comptroller to furnish it to the committee of Congress. If, however, neither the President nor the Comptroller believes that such information is useful or necessary to the Comptroller in the performance of his duties, the President could not properly direct him to procure it. Opin. U. S. Atty. Gen'l, November 9, 1912.

§ **5212.** [U. S. Comp. Stat. 1901, p. 3499.] In addition to the reports required by the preceding section, each association shall report to the Comptroller of the Currency, within ten days after declaring any dividend, the amount of such dividend, and the amount of net earnings

in excess of such dividend. Such report shall be attested by the oath of the president or cashier of the association.

See section 9 of Federal Reserve Act, *post.*

§ **5213.** [U. S. Comp. Stat. 1901, p. 3499.] Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned, that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States.

See section 9 of Federal Reserve Act, *post.*

§ **5214.** In lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year upon the average amount of its notes in circulation, and a duty of one-quarter of one per centum each half year upon the average amount of its deposits, and a duty of one-quarter of one per centum each half year on the average amount of its capital stock, beyond the amount invested in United States bonds.

(As re-enacted and amended by section 27 of Federal Reserve Act, *post.* The above text is as prior to May 30, 1908.)

See section 27 of Federal Reserve Act, *post.*

See Act of March 3, 1883, and notes to section 5219.

See section 13, Act of March 14, 1900, *post.*

One of the public policies of the national-bank act was to secure the public credit and encourage the issue of notes to circulate as currency founded upon United States bonds, and section 3411 will not be construed as intending to exempt those national banks that allowed their circulation to fall below 5 per cent. of their capital from the taxation provided by section 5214 to create a fund to bear the burden common to all national banks for engraving and printing the notes. (Merchants' Nat. Bank *v.* United States, 214 U. S. 33.)

§ 5215. [U. S. Comp. Stat. 1901, p. 3501.] In order to enable the Treasurer to assess the duties imposed by the preceding section, each association shall, within ten days from the first days of January and July of each year, make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as the Treasurer may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average amount of its capital stock, beyond the amount invested in United States bonds, for the six months next preceding the most recent first day of January or July. Every association which fails so to make such return shall be liable to a penalty of two hundred dollars, to be collected either out of the interest as it may become due such association on the bonds deposited with the Treasurer, or, at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States.

§ 5216. [U. S. Comp. Stat. 1901, p. 3501.] Whenever any association fails to make the half-yearly return required by the preceding section, the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such manner as the Treasurer may deem best.

§ 5217. [U. S. Comp. Stat. 1901, p. 3501.] Whenever an association fails to pay the duties imposed by the three preceding sections, the sums due may be collected in the manner provided for the collection of United States taxes from other corporations; or the Treasurer may reserve the amount out of the interest as it may become due, on the bonds deposited with him by such defaulting association.

The obligations and penalties imposed on national banks by sections 5214–5217, relate to solvent banks and not to a bank in the hands of the Comptroller of the Currency. Jackson, Receiver, *v.* United States, 20 Court of Claims, 298.

§ 5218. [U. S. Comp. Stat. 1901, p. 3502.] In all cases where an association has paid or may pay in excess of what may be or has been found due from it, on account of the duty required to be paid to the Treasurer of the United States, the association may state an account therefor, which on being certified by the Treasurer of the United States

and found correct by the first Comptroller of the Treasury, shall be refunded in the ordinary manner by warrant on the Treasury.

§ 5219. [U. S. Comp. Stat. 1901, p. 3502.] Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by nonresidents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county or municipal taxes, to the same extent, according to its value, as other real property is taxed.

1. Under this section and within the limitations therein prescribed, the whole interest of a shareholder in the shares held by him in a national bank are left subject to State taxation, which the State has a sovereign right and concurrent power with Congress to impose (but from the exercise of which Congress, by reason of its paramount authority, may exclude the State), although the capital of such bank be wholly invested in securities of the United States. Van Allen *v.* Assessors, 3 Wall. 373, 18 L. ed. 229.

2. The intention of Congress in the first of said limitations was that the rate of taxation of the shares should be the same, or not greater, than upon the moneyed capital of the individual citizen which is subject or liable to taxation. That is, no greater proportion or percentage of tax in the valuation of the shares should be levied, than upon other moneyed taxable capital in the hands of the citizens. Id.

3. The test by which to prevent discrimination against the shares is confined to the rate of assessments upon moneyed capital in the hands of individual citizens, so that the fact of insurance companies created under the laws of the State, and doing business in the city of New York, being respectively assessed upon the balance of their capital and surplus profits, liable to taxation, after deducting therefrom such part as is invested in United States securities, has no bearing on the question of the taxation of shares. These institutions are not within the words or the contemplation of Congress; they are taxed on their capital, and not on the shareholder, at the same rate as other personal property in the State. People *v.* The Commissioners, 4 Wall. 244, 18 L. ed. 344.

4. Shares of stock in national banks are a species of personal property which is in one sense, intangible and incorporeal, but the law which creates them may separate them from the person of their owner for the purposes of taxation, and give

them a situs of their own. This has been done by this section, which is a law of the property, and by virtue of which every person, resident, or nonresident, on becoming owner, voluntarily subjects himself to the jurisdiction of the State in which the bank is established for all the purposes of taxation on account of such ownership, and the State may legislate accordingly. Tappan *v.* Merchants' National Bank, 19 Wall. 490, 22 L. ed. 189.

5. The effect of this section is not limited to a discrimination in the percentage levied as a tax without regard to equality in the valuation on which that tax is levied. It is intended to prevent any rule of valuation which will operate unjustly or unequally against these shares, as well as to secure uniformity in percentage. People *v.* Weaver, 100 U. S. 539, 25 L. ed. 705.

In this case it was held that a statute of the State of New York, which refused to plaintiff the same deduction for debts due by him from the valuation of his shares of national bank stock, that it allows to those who have moneyed capital otherwise invested, is in conflict with this section.

6. Where, notwithstanding a statute required all moneyed capital to be appraised for the purpose of taxation at its true cash value, the assessors systematically appraise all other moneyed capital at much less than its true value while national bank shares are assessed at their full value. Held, that the tax on shares thus assessed was invalid, and that upon payment into court of the amount due upon a valuation determined according to the rule by which other moneyed capital is valued, a court of equity will restrain the collection of the balance. Pelton *v.* Commercial National Bank, 101 U. S. 143, 25 L. ed. 901. See, also, on this subject, Cummings *v.* Merchants' National Bank, 101 U. S. 153, 25 L. ed. 903; Pollard *v.* Zuber, 65 Ala. 635; Miller *v.* Heilburn, 58 Cal. 133.

7. But where by a State statute the citizen may have the amount of his indebtedness deducted from the total value of his personal property, thus ascertaining the amount of his personal estate subject to taxation, and a subsequent statute relating to taxation of bank shares makes no provision for such deduction, the latter statute is nevertheless the valid rule for assessing such shares in all instances in which there are no debts to be deducted. That the latter statute does not authorize a deduction for debts does not invalidate it, except as to that distinct and separable principle. Under such statutes, assessments of bank shares, where there are no debts to deduct, are valid. Even in cases of assessments where debts exist, which should be deducted, but are not, the assessments are voidable only, not void. Supervisors of Albany *v.* Stanley, 105 U. S. 305, 26 L. ed. 1044.

8. National bank shares may be assessed for the purpose of taxation at an amount above the par value, when the latter is exceeded by the market value, if such valuation is made by the State law, on other moneyed capital in the assessment of taxes. Hepburn *v.* School Directors, 23 Wall. 480, 23 L. ed. 112.

9. The right of a national bank to conduct its business is in no way dependent on a license to be obtained from the State where located, or any of its municipalities, and a fee therefore cannot be exacted. Carthage *v.* Carthage National Bank, 71 Mo. 508, 36 Am. Rep. 494; National Bank *v.* Titusville, 13 Fed. Rep. 429.

10. By a statute of Pennsylvania, it was enacted that "all mortgages, judgments, recognizances and money owing upon articles of agreement for the sale of real estate shall be exempt from taxation, except for State purposes." It was objected that this exemption by relieving certain specified property from taxation brought the case within the first restriction mentioned in this section, and thus violated the tax sought

to be enforced. The court held otherwise in Hepburn *v.* School Directors, 23 Wall. 480, 23 L. ed. 112. See Adams *v.* Nashville, 95 U. S. (5 Otto) 19, 24 L. ed. 369.

11. Where national bank shares are required in any State to be taxed at their par value, the surplus fund, if any, of such bank, in excess of the amount they are required by law to keep on hand, is taxable (First National Bank *v.* Peterborough, 56 N. H. 38, 22 Am. Rep. 416), and, when the State laws so provide, may be taxed against the bank as to non-residents; but where such law provides that it be taxed in connection with the capital stock in the hands of the stockholders, it is not taxable separately. State, etc., *v.* City of Newark, 10 Vroom, 380; reversed, 11 id. 559, on ground that bank cannot be taxed for shares of resident stockholders (note amended in accordance therewith).

12. The surplus fund which a national bank is required by this section to reserve from its net profits is not excluded in the valuation of its shares for taxation. Strafford National Bank *v.* Dover, 58 N. H. 316; First National Bank *v.* Peterborough, 56 id. 38, 22 Am. Rep. 416; Thomp. N. B. Cases, 658; National Bank *v.* Commonwealth, 9 Wall. 353, 19 L. ed. 701; Thomp. N. B. Cases, 34; People *v.* Commissioners, 67 N. Y. 516; S. C., 94 U. S. 415, 24 L. ed. 164.

13. The personal property of an insolvent national bank, in the hands of a receiver appointed under section 5234, is exempt from taxation under State laws. Such property in legal contemplation still belongs to the bank, though in the hands of a receiver, to be administered under the law. The bank does not cease to exist on the appointment of a receiver. Its corporate capacity continues until its affairs are finally wound up and its assets distributed. If the shares have any value, they are taxable in the hands of the holders or owners under this section; but the property held by the receiver is exempt to the same extent it was before his appointment. WAITE, C. J. Rosenblatt *v.* Johnston, 104 U. S. (14 Otto) 462, 26 L. ed. 832.

14. The tax on capital and deposits was abolished by the Act of March 3, 1883, and it is a question how far the same is retroactive. The tax of one-half of one percentum each half year on notes in circulation is all that remains of the original act. See Act of March 3, 1883, *post.*

15. The purpose of Congress in fixing limits to State taxation of shares of national banks was to prevent the State from creating unfriendly competition by favoring institutions or individuals carrying on a similar business.

The term "moneyed capital," as used in section 5219, includes capital employed in national banks, and capital employed by individuals in the business of making profit by the use of moneyed capital as money. It does not include the capital of a corporation even if its business is such as to make its shares moneyed capital when in the hands of individuals, or if it invests capital in securities payable in money. Savings banks deposits are exempted from taxation in New York for just reasons, and such exemption does not discriminate unjustly against national bank investments. Mercantile Bank *v.* New York, 121 U. S. 138, 30 L. ed. 895, 7 Sup. Ct. Rep. 826, followed in 125 U. S. 60, 31 L. ed. 689, 8 Sup. Ct. Rep. 772.

16. Section 5219, does not require perfect uniformity of taxation between national and State banks; but requires the avoidance of a method of discrimination unfavorable to investments in national banks and favorable to State banks and corporations.

A statute regulating State taxation which is not on its face intended to discriminate as above, in the absence of proof that it works an actual and unjust discrimination, will not be unconstitutional. Davenport Bank *v.* Davenport Board of

Equalization, 123 U. S. 83, 31 L. ed. 94, 8 Sup. Ct. Rep. 73. Affirmed in Bank of Redemption *v.* Boston, 125 U. S. 60, 31 L. ed. 689, 8 Sup. Ct. Rep. 772.

17. The intent of this section is to permit the State in which a national bank is located, to tax the shares of capital stock without regard to the residences of the owners of such shares; subject, however, to the limitations of the section. This is also the intent where national banks in other States are the owners of such stock. Bank of Redemption *v.* Boston, 125 U. S. 60, 31 L. ed. 689, 8 Sup. Ct. Rep. 772.

18. Where a county officer fixed the taxable value of national bank stock at 60 per cent. of true value in money, as was the local custom adopted for the valuation of other moneyed capital of individuals in that State, and a board of equalization increased the national bank valuation to 65 per cent. without a corresponding increase in the valuation of other moneyed capital stock. *Held*, to be a discrimination in violation of section 5219. Whitbeck *v.* Mercantile Nat. Bank, 127 U. S. 193, 32 L. ed. 118, 8 Sup. Ct. Rep. 1121.

19. The method of appraisal and the time for the correction of errors in assessments are within the legislative control of the State. The legislature may remedy any omission or error, provided that intervening rights are not impaired. The statute passed by the Legislature of New York, April 30, 1883, to confirm the assessments in Albany for the years 1876, 1877 and 1878 is not in conflict with the Acts of Congress respecting taxation of national bank stock and was a valid exercise of state legislative control. Williams *v.* Albany Supervisors, 122 U. S. 154, 30 L. ed. 1088, 7 Sup. Ct. Rep. 1244.

20. This section does not authorize a tax upon the bank itself—*in solido.* Only the shares can be assessed, and these only as the shares, *i. e.*, individual property of the shareholders, and of resident shareholders only. First National Bank *v.* City of Richmond, 39 Fed. Rep. 309.

21. Capital of national and State banks invested in United States securities cannot be subjected to State taxation; but shares of bank stock may be taxed in the hands of their individual owners at the actual, instead of their par value, without regard to the fact that part or whole of the capital of the corporation might be so invested. Palmer *v.* McMahon, 133 U. S. 660, 33 L. ed. 772, 10 Sup. Ct. Rep. 324.

22. "Under acts permitting the deduction of debts from the value of all a person's taxable property, such deductions must be permitted from the value of such shares; but a statute is not void because it does not provide for a deduction; nor is the assessment void if the deductions are not made but voidable only." Id.

23. When a law provides a mode for confirming or contesting an assessment for taxation, with appropriate notice to the person charged, the assessment cannot be said to deprive the owner of his property without due process of law. Id.

24. Assessors should give all persons taxed an opportunity to be heard, but it is sufficient if the law provides for a board of revision, authorized to hear complaints respecting the justice of the assessment, and prescribes the time during which and the place where such complaints may be made. Id.

25. The territories possess the same power of taxing national banks which the States enjoy. Talbot *v.* Silver Bow County, 139 U. S. 438, 35 L. ed. 210, 11 Sup. Ct. Rep. 594.

26. Trust companies in New York are not engaged in a "banking business" in a legal or commercial sense under the Banking Law, and assessing bank stock at a greater rate than individual capital is assessed in trust companies does not violate section 5219. Jenkins *v.* Neff, 163 N. Y. 320, 57 N. E. 408, 186 U. S. 230.

27. The deduction of debts from credits allowed in personal assessments, not allowed to national bank stock is not illegal discrimination. First National Bank of Wellington *v.* Chapman, 173 U. S. 205, 43 L. ed. 669, 19 Sup. Ct. Rep. 407.

28. As to State taxation of national banks, see editorial note to McHenry *v.* Downer, 45 L. R. A. 737, containing a full presentation of the authorities on that question; see also editorial note to South Covington & Cincinnati Street R. Co. *v.* Bellevue, 57 L. R. A. 56, as to state taxation of franchises of such banks.

29. The tax on property of a bank in which United States securities are included is beyond the State power, and is also within the prohibition of section 3701 of U. S. Revised Statutes. Home Sav. Bank *v.* Des Moines, 205 U. S. 503.

30. The corporation tax, as imposed by Congress in the tariff act of 1909, is not a direct tax, but an excise; it does not fall within the apportionment clause of the Constitution, but is within, and complies with, the provision for uniformity throughout the United States; it is an excise on the privilege of doing business in a corporate capacity and as such is within the power of Congress to impose; franchises of corporations are not governmental agencies of the State and the tax is not invalid as an attempt to tax State governmental instrumentalities; not being direct taxation, but an excise, the tax is properly measured by the entire income of the parties subject to it notwithstanding a part of such income may be derived from non-taxable property; the tax does not take property without due process of law nor is it arbitrarily unequal in its operation either by differences in corporations or by reason of the classes exempted; the method of its enforcement is within the power of Congress and all corporations, not specially exempted by act itself, carrying on any business, are subject to the provisions of the law. Flint *v.* Stone Tracy Co., 220 U. S. 107.

31. A State statute may make a bank the agent for its own shareholders in compelling returns to make it liable for taxes assessed against the shareholders. The liability of the bank is that of the shareholder, and its reimbursement must come from those who hold the shares when the bank liability is enforced. The liability of the purchaser of shares for taxes not paid, and of the bank as agent for its shareholders, is one of the notorious and necessary consequences of the long-sanctioned right of the States to compel such banks to return its shares for taxation and to pay the assessment thereon if the shareholder does not. Citizens' Nat. Bank *v.* Kentucky, 217 U. S. 443.

32. An act assessing stockholders of national banks, although illegal as to a class of stockholders not similarly taxed on shares in other moneyed institutions, may be legal as to the class which is similarly taxed; and so held that section 3 of the act of March 21, 1900, of Kentucky, providing for back assessments on shares of national banks, although not legal as to nonresident stockholders, there having been no statute prior to 1900 providing for the assessing of stock of nonresident stockholders of other moneyed corporations, is not illegal as to resident stockholders, as there were statutory provisions for assessing them for stocks in other moneyed corporations of the State prior to 1900.

Covington *v.* First National Bank, 198 U. S. 100, distinguished.

Citizens' Nat. Bank *v.* Kentucky, 217 U. S. 443.

33. As to an illegal tax, and the remedies for the prevention of collection, see Boyer *v.* Boyer, 113 U. S. 143; First Nat'l Bank *v.* Allbright, 208 U. S. 548; Cummings *v.* Bank, 101 U. S. 153.

CHAPTER IV

DISSOLUTION AND RECEIVERSHIP

§ **5220.** [U. S. Comp. Stat. 1901, p. 3503.] Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock.

See Act of June 30, 1876, *post.*

It was not intended by this section that, upon simply resolving to go into liquidation, and providing for the redemption of its circulating notes, the banking association should be dissolved. If by such acts it were dissolved, all actions by or against it would abate, and parties might be left utterly without remedy for the enforcement of the plainest right, or recompense for the most grievous wrong. Ordway *v.* Central Nat. Bank, 47 Md. 217, 28 Am. Rep. 455.

§ **5221.** [U. S. Comp. Stat. 1901, p. 3503.] Whenever a vote is taken

to go into liquidation, it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association, by its president or cashier, to the Comptroller of the Currency, and publication thereof to be made for a period of two months in a newspaper published in the city of New York, and also in a newspaper published in the city or town in which the association is located, or if no newspaper is there published, then in the newspaper published nearest thereto, that the association is closing up its affairs, and notifying the holder of its notes and other creditors to present the notes and other claims against the association for payment.

See Act of July 12, 1882, §§ 6 and 7, *post.*

§ 5222. [U. S. Comp. Stat. 1901, p. 3503.] Within six months from the date of the vote to go into liquidation, the association shall deposit with the Treasurer of the United States lawful money of the United States sufficient to redeem all its outstanding circulation. The Treasurer shall execute duplicate receipts for money thus deposited, and deliver one to the association and the other to the Comptroller of the Currency, stating the amount received by him, and the purpose for which it has been received; and the money shall be paid into the Treasury of the United States, and placed to the credit of such association upon redemption account.

See Act of July 12, 1882, §§ 6 and 7, *post.*

§ 5223. [U. S. Comp. Stat. 1901, p. 3504.] An association which is in good faith winding up its business for the purpose of consolidating with another association shall not be required to deposit lawful money for its outstanding circulation; but its assets and liabilities shall be reported by the association with which it is in process of consolidation.

§ 5224. [U. S. Comp. Stat. 1901, p. 3504.] Whenever a sufficient deposit of lawful money to redeem the outstanding circulation of an association proposing to close its business has been made, the bonds deposited by the association to secure payment of its notes shall be reassigned to it, in the manner prescribed by section fifty-one hundred and sixty-two. And thereafter the association and its share-

holders shall stand discharged from all liabilities upon the circulating notes, and those notes shall be redeemed at the Treasury of the United States. And if any such bank shall fail to make the deposit and take up its bonds for thirty days after the expiration of the time specified, the Comptroller of the Currency shall have power to sell the bonds pledged for the circulation of said bank, at public auction in New York City, and, after providing for the redemption and cancellation of said circulation and the necessary expenses of the sale, to pay over any balance remaining to the bank or its legal representative.

(As amended by Act of February 18, 1875.)
See Act of July 12, 1882, §§ 6 and 7, *post.*

§ **5225.** [U. S. Comp. Stat. 1901, p. 3504.] Whenever the treasurer has redeemed any of the notes of an association which has commenced to close its affairs under the five preceding sections, he shall cause the notes to be mutilated and charged to the redemption account of the association; and all notes so redeemed by the Treasurer shall, every three months, be certified to and burned in the manner prescribed in section fifty-one hundred and eighty-four.

(As amended by Act of February 27, 1877.)
See Act of June 23, 1874, *post;* Act of July 12, 1882, §§ 6 and 7, *post.*

§ **5226.** [U. S. Comp. Stat. 1901, p. 3505.] Whenever any national banking association fails to redeem in the lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, or at its designated place of redemption, the holder may cause the same to be protested, in one package by a notary public, unless the president or cashier of the association whose notes are presented for payment, or the president or cashier of the association at the place at which they are redeemable, offers to waive demand and notice of the protest, and in pursuance of such offer, makes, signs and delivers to the party making such demand an admission in writing, stating the time of the demand, the amount demanded, and the fact of the nonpayment thereof. The notary public. on making such protest, or upon receiving such admission, shall forthwith forward such admission or notice of protest to the Comptroller of the Currency, retaining a copy thereof. If, however, satis-

factory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest.

§ **5227.** [U. S. Comp. Stat. 1901, p. 3505.] On receiving notice that any national banking association has failed to redeem any of its circulating notes, as specified in the preceding section, the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, may appoint a special agent, of whose appointment immediate notice shall be given to such association, who shall immediately proceed to ascertain whether it has refused to pay its circulating notes in the lawful money of the United States, when demanded, and shall report to the Comptroller the fact so ascertained. If from such protest, and the report so made, the Comptroller is satisfied that such association has refused to pay its circulating notes and is in default, he shall, within thirty days after he has received notice of such failure, declare the bonds deposited by such association forfeited to the United States, and they shall thereupon be so forfeited.

§ **5228.** [U. S. Comp. Stat. 1901, p. 3506.] After a default on the part of an association to pay any of its circulating notes has been ascertained by the Comptroller, and notice thereof has been given by him to the association, it shall not be lawful for the association suffering the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it, and to deliver special deposits.

The provision of this section which makes it lawful for a national bank, after its failure to "deliver special deposits," implies that such banks may, as a part of their legitimate business, receive special deposits, and this implication is as effectual as an express declaration of the same thing would be. The phrase "special deposits," thus used, embraces securities of the United States. National Bank *v.* Graham, 100 U. S. (10 Otto) 699, 25 L. ed. 750. And see Pattison *v.* Syracuse National Bank, 80 N. Y. 82, 36 Am. Rep. 582.

§ **5229.** [U. S. Comp. Stat. 1901, p. 3506.] Immediately upon declaring the bonds of an association forfeited for nonpayment of its notes, the Comptroller shall give notice, in such manner as the Secre-

tary of the Treasury shall, by general rules or otherwise, direct, to the holders of the circulating notes of such association, to present them for payment at the Treasury of the United States; and the same shall be paid as presented in lawful money of the United States; whereupon the Comptroller may, in his discretion, cancel an amount of bonds pledged by such association equal at current market rates, not exceeding par, to the notes paid.

§ **5230.** [U. S. Comp. Stat. 1901, p. 3506.] Whenever the Comptroller has become satisfied, by the protest or the waiver and admission specified in section fifty-two hundred and twenty-six, or by the report provided for in section fifty-two hundred and twenty-seven, that any association has refused to pay its circulating notes, he may, instead of cancelling its bonds, cause so much of them as may be necessary to redeem its outstanding notes to be sold at public auction in the city of New York, after giving thirty days' notice of such sale to the association. For any deficiency in the proceeds of all the bonds of an association, when thus sold, to reimburse to the United States the amount expended in paying the circulating notes of the association, the United States shall have a paramount lien upon all its assets; and such deficiency shall be made good out of such assets in preference to any and all other claims whatsoever, except the necessary costs and expenses of administering the same.

§ **5231.** [U. S. Comp. Stat. 1901, p. 3507.] The Comptroller may, if he deems it for the interest of the United States, sell at private sale any of the bonds of an association shown to have made default in paying its notes, and receive therefor either money or the circulating notes of the association. But no such bonds shall be sold by private sale for less than par, nor for less than the market value thereof at the time of the sale; and no sales of any such bonds, either public or private, shall be complete until the transfer of the bonds shall have been made with the formalities prescribed by sections fifty-one hundred and sixty-two, fifty-one hundred and sixty-three, and fifty-one hundred and sixty-four.

§ **5232.** [U. S. Comp. Stat. 1901, p. 3507.] The Secretary of the Treasury may, from time to time, make such regulations respecting the disposition to be made of circulating notes after presentation at

the Treasury of the United States for payment, and respecting the perpetuation of the evidence of the payment thereof, as may seem to him proper.

§ **5233.** [U. S. Comp. Stat. 1901, p. 3507.] All notes of national banking associations presented at the Treasury of the United States for payment shall, on being paid, be cancelled.

See Act of June 20, 1874, § 3, *post.*

§ **5234.** [U. S. Comp. Stat. 1901, p. 3507.] On becoming satisfied, as specified in sections fifty-two hundred and twenty-six and fifty-two hundred and twenty-seven, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver and require of him such bond and security as he deems proper. Such receiver, under the direction of the Comptroller, shall take possession of the books, records and assets of every description of such association, collect all debts, dues and claims belonging to it, and upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings.

See Act of June 30, 1876, § 1, and Act of March 2, 1897, amendment of section 3 of the same, *post.*

See also sections 5141, 5191, 5201, 5205, 5208, *ante.*

1. The receiver is the instrument of the Comptroller. He is appointed by the Comptroller, and the power of appointment carries with it the power of removal. It is for the Comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much shall be collected. These questions are referred to his judgment and discretion and his determination is conclusive. The stockholders cannot controvert it. It is not to be questioned in the litigation that may ensue. He may make it at such a time as he may deem proper, and upon such data as shall be satisfactory to him. This action on his part is indispensable, whenever the personal liability of the stockholder is sought to be enforced, and must precede the institution of suit by the receiver. The fact must be distinctly averred in all such

cases, and if put in issue must be proved. Kennedy *v.* Gibson, 8 Wall. 498, 19 L. ed. 476; approved in Casey *v.* Galli, 94 U. S. 673, 24 L. ed. 168.

2. It is sufficient for the appointment of a receiver that the Comptroller is satisfied of the facts, as required by this section, to authorize him to make the appointment. No legal proofs or evidence of the facts are required. The Comptroller is left to be satisfied, as best he can be under the peculiar circumstances of each case, of the existence of the facts and the necessity of his action. Hence, in an action by the receiver, the validity of the latter's appointment, or the right of the Comptroller to make it, cannot be questioned, notwithstanding the facts alleged in the certificate of appointment are not established by competent legal evidence on the trial. Platt *v.* Beebe, 57 N. Y. 339; Cadle *v.* Baker, 20 Wall. 650, 22 L. ed. 448.

3. The action of the Comptroller in making the appointment is conclusive as to debtors, until set aside on application of the bank, for which provision is made in section 5237 [U. S. Comp. Stat. 1901, p. 3508], *post.* Id.

4. The language of the statute authorizing the appointment of a receiver, to act under the direction of the Comptroller, means no more than that the receiver shall be subject to the direction of the Comptroller. It does not mean that he shall do no act without special instructions. His very appointment makes it his duty to collect the assets and debts of the association. With regard to ordinary assets and debts no special direction is needed. Bank *v.* Kennedy, 17 Wall. 19, 21 L. ed. 554.

5. Stockholders are not ordinary debtors of the bank, and the receiver cannot enforce their personal liability without the direction of the Comptroller. Id.; and Kennedy *v.* Gibson, 8 Wall. 499, 19 L. ed. 476.

6. The receiver is the statutory assignee of the association, and is the proper party to institute all suits; they may be brought both at law and in equity, in his name, or in the name of the association for his use. He represents both the creditors and the association, and when he sues in his own name it is not necessary to make either a party to the suit. Id.

7. The liability of the stockholders is several, and not joint. The limit of their liability is the amount of the stock held by each one. Where the whole amount is sought to be recovered, the proceeding must be at law. Where less is required, the proceeding may be in equity, and in such case an interlocutory decree may be taken for contribution, and the case may stand over for the further action of the court—if such action should subsequently prove to be necessary—until the full amount of the liability is exhausted. It would be attended with injurious consequences to forbid action against the stockholders until the precise amount necessary to be collected shall be formally ascertained. Id.; and Casey *v.* Galli, 94 U. S. 673, 24 L. ed. 168. It was held in Stanton, Receiver, *v.* Wilkeson, 8 Ben. 357, Fed. Cas. No. 13,299, that where less than the par value was assessed, the action might be at law, at the option of the receiver.

8. Though the stockholders are only conditionally liable for the debts of the bank, after all the ordinary resources have been exhausted (Bank *v.* Kennedy, above cited), still suits to enforce their personal liability may properly be brought before the actual exhaustion of all the assets. Kennedy *v.* Gibson, 8 Wall. 499, 19 L. ed. 476.

9. When contribution only is sought, all the stockholders who can be reached by the process of the court may be joined in the suit. It is no objection that there are others beyond the jurisdiction of the court who cannot for that reason be made co-defendants. Id.

10. In ordering an assessment, the stock certificates and the stock ledger are the

basis upon which the Comptroller of the Currency, in the absence of fraud or mistake, must rely. Davis, Receiver, *v.* Essex Baptist Society, 44 Conn. 582, Fed. Cas. No. 3,633, *obiter*.

11. Where a shareholder of a corporation (as a national bank) is called upon to respond to a liability as such, and where a party has contracted with a corporation, and is sued upon the contract, neither is permitted to deny the existence or the legal validity of such corporation. Casey *v.* Galli, 94 U. S. 673, 24 L. ed. 168.

12. The assessment bears interest from the date of the Comptroller's order. Id.

13. A stockholder of an insolvent national bank, who is also a creditor thereof, cannot in an action by the receiver to enforce an assessment, set off his individual claim against such assessment. Hobart *v.* Gould, 8 Fed. Rep. 57; Sawyer *v.* Hoag, 17 Wall. 610, 21 L. ed. 731. In the latter case it was decided by the United States Supreme Court, that a stockholder who had given his notes for his stock subscription, and who was sued thereon after the insolvency of the institution, could not offset debts due him from the corporation, in the ordinary course of business, on the ground that the money arising from the unpaid shares was a trust fund to be equally divided among all the creditors. See also Scammon *v.* Kimball, 92 U. S. (2 Otto) 362, 23 L. ed. 483; Garrison *v.* Howe, 17 N. Y. 458; *In re* Empire City Bank, 18 id. 199.

14. The United States District Court has jurisdiction to authorize a receiver of an insolvent national bank to compromise a debt. Matter of Platt, 1 Ben. 534, Fed. Cas. No. 11,211.

15. A court is not authorized by this section to order a receiver to "sell or compound" other than "bad or doubtful debts," from which category the personal liability of the stockholder is excluded, both by a separate classification in the section as well as by the import of its terms. Price, Receiver, *v.* Yates, 19 Alb. L. J. 295, Fed. Cas. No. 11,418.

16. The receiver of an insolvent national bank represents the bank, its stockholders and its creditors, but not in any sense the government; and neither he nor the Comptroller can subject the rights of the government to litigation in any court without some express provision of law to that effect. Case *v.* Terrell, 11 Wall. 199, 20 L. ed. 134.

17. An action will not lie against the receiver, upon a claim against an insolvent national bank. He has no control over the assets, except to pay their proceeds over to the Treasurer of the United States. If any action could be maintained against the Comptroller, it would be to enforce a proper distribution of the fund; but such action will lie against the bank which continues to exist for the purpose of being sued. Chemical National Bank *v.* Bailey, 12 Blatchf. 480, Fed. Cas. No. 2,635.

18. A suit against a national bank to enforce the collection of a demand is abated by a decree dissolving the corporation, and forfeiting its rights and franchises. National Bank *v.* Colby, 21 Wall. 609, 22 L. ed. 687.

19. The property of a national bank organized under the Act of Congress of June 3, 1864 (13 Stat. at Large, 99), attached at the suit of an individual creditor, after the bank has become insolvent, cannot be subjected to the sale for the payment of his demand, against the claim for the property by a receiver of the bank subsequently appointed. Id.

20. A depositor in a national bank which has failed and passed into the hands of a receiver, may set off the amount of his deposit against his debt to the bank on a note. Platt, Receiver, *v.* Bentley, 11 Am. Law Reg. 171. Even though the note has not matured. Berry, Receiver, *v.* Brett, 10 Supr. 627. A depositor of a bank is en-

titled to set off on a bond and mortgage the amount of his deposit. Matter of New Amsterdam Bank *v.* Gartter, 54 How. Pr. 385. But it was held in Osborn *v.* Byrne, 43 Conn. 155, 21 Am. Dec. 641, that a deposit could not be set off against a debt due the bank on a note, unless, perhaps, the deposit was made for the purpose of applying on such indebtedness, and the bank officer knew that fact.

21. A national bank having become insolvent, a depositor therein assigned his deposit to a debtor of the bank, Held, that the latter could not off set such deposit against his debt in an action thereon. Venango National Bank *v.* Taylor, 56 Penn. St. 14.

22. Usurious interest paid cannot be set off. Hade *v.* McVay, 31 Ohio St. 231; Barnet *v.* National Bank, 98 U. S. 555, 25 L. ed. 212.

23. The priority of payment of debts given the United States by the provision of section 3466, U. S. R. S., does not include demands against an insolvent national bank. Cook County National Bank *v.* United States, 107 U. S. (17 Otto) 445, 27 L. ed. 537 2 Sup. Ct. Rep. 561, overruling S. C. 25 Int. Rev. Record, 266.

24. If a registered owner transfers his stock in a failing corporation to an irresponsible person for the mere purpose of escaping liability, or if his transfer is colorable only, the transaction is void as against creditors, so as to leave the real owner liable to assessment as a stockholder. One S. bought shares in a national bank, and caused them to be transferred to one E., a porter in the office of his New York broker, and irresponsible. At the time of the transfer, there was no suspicion of the insolvency of the bank, and it remained in good credit for more than a year afterward. Held, that S. was liable as stockholder upon the failure of the bank. National Bank *v.* Case, 99 U. S. 628, 25 L. ed. 488. See also Davis, Receiver, *v.* Stevens, 17 Blatchf. 259, Fed. Cas. No. 3,653.

25. The liability incurred by a holder of national bank stock is statutory, and not by contract. Being so, it attaches, as an incident of ownership, to all who are capable of such ownership, without reference to any supposed voluntary assumption by contract, express or implied. Therefore when national bank stock is held by a *feme covert*, either in her own right or subject to the marital rights of her husband, the liability to be assessed affects her alone, and it is not necessary, in an action to enforce collection of an assessment, to join her husband, as would be necessary if it were a common-law obligation or liability of the wife. Keyser *v.* Hitz, 2 Mackey (D. C.), 474.

26. Certain shares of stock were transferred directly from a husband to his wife, and a suit was instituted against both. Held, that the coverture did not exempt her from the liability imposed by this act on all the stockholders of a national bank. Anderson *v.* Line, 14 Fed. Rep. 405. That the liability of a shareholder in a national bank is by contract, or in the nature thereof. See Davis *v.* Weed, 44 Conn. 569, Fed. Cas. No. 3,658; citing Hawthorne *v.* Calef, 2 Wall. 22, 17 L. ed. 779; Loury *v.* Inman, 46 N. Y. 119; Bailey *v.* Hollister, 26 id. 112.

27. T. owed a national bank $35,000; R. had a deposit in the bank of $40,000; the bank, becoming insolvent, stopped payment. The next day R. assigned his deposit to T. Held, that T. could not set off the deposit against the indebtedness due from him to the bank, as it would give a preference of one creditor over the others, after the insolvency of the bank. Sections 5234 and 5242 apply to legal as well as voluntary transfers of the bank. The law will not compel a payment or transfer which it prohibits a debtor from making. Venango National Bank *v.* Taylor, 56 Penn. St. 14.

28. The Comptroller of the Currency has no power to compound or settle claims of a national bank against its debtors; that requires the authority of the court under this section. Davis *v.* Stevens, 17 Blatchf. 259, Fed. Cas. No. 3,653, 99 U. S. 628, 25 L. ed. 448.

29. A receiver of a national bank is a Federal officer, and may sue in his own name to enforce assessments against stockholders, and for that purpose he may bring separate actions at law against the several stockholders. Stanton, Receiver, *v.* Wilkeson, 8 Ben. 357, Fed. Cas. No. 13,299; Bailey, Receiver, *v.* Sawyer, 4 Dill. 463, Fed. Cas. No. 744.

30. The residuary interest of a national bank in bonds pledged as security for its circulating notes is an asset of the bank, which, if not transferred before its insolvency, is thereafter to be applied by the receiver under this section to the payment of its debts. There is no other provision in the act for the disposition of the moneys arising out of such residuary interest. Van Antwerp *v.* Hulburd, 8 Blatchf. 282, Fed. Cas. No. 16,827.

31. There is no provision in the act authorizing the Comptroller or Treasurer to dispose of the residue or surplus proceeds of such bonds in payment of the debts of the bank, or otherwise, and, as it is only of the moneys paid over by the receiver, under this section, that the Comptroller is authorized to make a dividend, therefore, until such surplus has passed into the hands of the receiver and has by him been paid over to the Treasurer, subject to the order of the Comptroller, the latter has no power to make any distribution thereof in payment of the general debts of the bank. Id. See also notes 2 and 3, section 5159, *ante.*

32. The United States Circuit Court, in rendering a judgment against an insolvent national bank in charge of a receiver, may provide for its payment by ordering therein, that it (the judgment) be paid by the receiver, or certified by him to the Comptroller to be paid in due course of administration. Case *v.* Bank, 100 U. S. 446, 25 L. ed. 695.

33. Receiver of national bank may enforce in his own name or in the name of the bank, against the directors for the benefit of stockholders and creditors, any claim for nonperformance or negligent performance, that the bank might have enforced. Movius, Receiver, *v.* Lee *et al.*, 30 Fed. Rep. 298.

34. A receiver of a national bank appointed by the Comptroller of the Currency is not responsible in equity to owner of real estate for rent, received officially and paid into United States Treasury. Hitz *v.* Jenks, 123 U. S. 298, 31 L. ed. 156, 8 Sup. Ct. Rep. 143.

35. The expenses of a receivership occasioned by a creditor's suit, are not chargeable to stockholders but to the creditors. Richmond *v.* Irons, 121 U. S. 27, 30 L. ed. 864, 7 Sup. Ct. Rep. 788.

36. The assessment made by the Comptroller of the Currency is conclusive upon the stockholders, and an action at law may be maintained by the receiver therefor. At least it is only necessary in the complaint to allege that the Comptroller determined that it was necessary to enforce the liability of the stockholders, and did levy the assessment. Young *v.* Wempe, 46 Fed. Rep. 354.

37. It is by no means clear that the statutory liability of the stockholder is a debt, within the meaning of this section, and it is therefore doubtful whether the court has the power to authorize the compounding of the statutory liability of a stockholder in a national bank. *In re* certain stockholders of California Nat. Bank, 53 Fed. Rep. 38.

38. A married woman is liable in equity to be assessed under this section when by the law of the place of her residence she can become a stockholder. Bundy *v.* Cocke, 128 U. S. 185, 32 L. ed. 397, 9 Sup. Ct. Rep. 242. They are also liable in law. Keyser *v.* Hitz, 133 U. S. 138, 33 L. ed. 531, 10 Sup. Ct. Rep. 290.

39. Where stock was sold to pay assessment caused by misconduct of directors in making worthless loans. Held, that stockholder damaged by such forced sale may sue such directors, for himself and others similarly situated. Hanna *v.* People's Nat. Bank, 35 Misc. 517, 71 N. Y. Supp. 1076.

40. Stockholder's liability. Comptroller's decision conclusive. Receiver of insolvent bank. The decision of Comptroller of Currency that it is necessary to begin proceedings against stockholders to enforce personal liability, is conclusive; by his decision the liability of a stockholder becomes a definite liquidated claim. Section 5234, U. S. Rev. Stat., authorizing receiver to enforce personal liability of stockholders is not a personal trust which bars its transfer to assignee of claim. Waldron *v.* Alling, 73 App. Div. 86, 76 N. Y. Supp. Rep. 250.

41. Statute requiring enforcement of amount of assessment on national bank stock against next of kin or distributive share so far as such share goes, is not in conflict with Federal law. Matteson *v.* Dent, 176 U. S. 530, 44 L. ed. 576, 20 Sup. Ct. Rep. 419.

42. A transfer of stock properly delivered to officer of the bank although there is a failure to enter it, will operate as a proper transfer. Matteson *v.* Dent, *supra.*

43. A national bank, receiving shares of another as collateral, will be presumed not to intend to become owner, and if sued for assessments on such shares may set up lack of power. Robinson *v.* Southern Nat. Bank, 180 U. S. 309, 45 L. ed. 541, 21 Sup. Ct. Rep. 383.

44. The duty of Comptroller under this section empowers him to make a further assessment if necessary, and if previous one is not sufficient to exhaust par value of shares. Studebaker *v.* Perry, 184 U. S. 261, 46 L. ed. 530, 27 Sup. Ct. Rep. 463.

45. Receiver is not liable to suit by stockholders for fraud of bank officers in inducing him to buy stock. Lantry *v.* Wallace, 182 U. S. 554, 45 L. ed. 1227, 21 Sup. Ct. Rep. 878.

46. Receiver of national bank appointed by Comptroller is not an officer of the court, but the officer of the United States. *In re* Chetwood, 165 U. S. 458, 41 L. ed. 787, 17 Sup. Ct. Rep. 385.

47. A national bank continues to exist, and may sue and be sued although the Comptroller has appointed a receiver. Moss *v.* Goodhard, 209 Fed. Rep. 102.

§ 5235. [U. S. Comp. Stat. 1901, p. 3508.] The Comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same, and to make legal proof thereof.

Proof of claim under this section must be as the claim exists at the time proof is made, and not at the time or date of the suspension of the bank, so that where after the suspension and before filing proof of his claim a creditor of the bank realizes on securities held by him as collateral to the loan he must deduct the amount so received from the amount of his claim. Chemical Nat. Bank *v.* Armstrong, 50 Fed. Rep. 798.

§ 5236. [U. S. Comp. Stat. 1901, p. 3508.] From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives in proportion to the stock by them respectively held.

See Act of June 30, 1876, § 3, as amended March 2, 1897, *post.*

1. The claims of creditors may be proved before the Comptroller, or established by suit against the association. Creditors must seek their remedy through the Comptroller in the mode prescribed by the statute; they cannot proceed directly in their own name against the stockholders or debtors of the bank. Kennedy *v.* Gibson, 8 Wall. 506, 19 L. ed. 479; Bank of Bethel *v.* Pahquioque Bank, 14 Wall. 383, 20 L. ed. 840.

2. The claims, when proved to the satisfaction of the Comptroller, are upon the same footing as if they had been reduced to judgments. National Bank of Commonwealth *v.* Mechanics' National Bank, 94 U. S. 437, 24 L. ed. 176.

3. Claims disallowed by the Comptroller may be presented in a court having jurisdiction in such cases. Bank of Bethel *v.* Pahquioque Bank, Id.

4. But judgment, when recovered, will not, in any case, give the creditor any lien on the property of the delinquent association, nor secure to the judgment creditor any preference over other creditors, whose claims are proven before the receiver. All alike must await the action of the Comptroller of the Currency, and be content with a just and legal distribution of the proceeds of the assets collected by the receiver, and liquidated by the Comptroller according to the Act of Congress in such case made and provided. Id.

5. Claims proved to his satisfaction are to be paid by the Comptroller, as debts proved against an insolvent are to be paid by his assignee; and in the one case, as in the other, the interest is an incident of the debt or claim, and to be paid before distribution of the surplus, without regard to the fact whether the debts are those upon contract conditioned for the payment of interest, or not. Chemical National Bank *v.* Bailey, 12 Blatchf. 480, Fed. Cas. No. 2,635.

6. An action in assumpsit will not lie against either the Comptroller or receiver to recover such interest, but will lie against the bank. Id.

7. Ordinarily, an action cannot be maintained by a depositor against a bank, until a formal demand has been made; and, of course, no interest can be recovered, except that arising after the demand. The bringing of an action does not amount to a demand in such cases. Payne *v.* Gardiner, 29 N. Y. 146. But if the bank, by words or contract, denies the depositor's right to his balance, it becomes presently liable to an action, without formal demand, and interest would be recoverable as damages. Such is the case where a bank, by its default, initiates proceedings which result in a

transfer of the moneys of its depositors to a receiver, and thus puts it out of its power to pay its depositors when called upon to do so. A demand, under such circumstances, would have been an idle ceremony. The bank cannot be permitted to say that the depositor should have made a demand, when, if made, it would have been nugatory and useless. It has been held, that, in cases of insolvency, where a debt is payable on demand, and no special demand is shown, interest is to be computed from the first publication of the proceedings in insolvency. Brown *v.* Lamb, 6 Metc. 203. Reason and analogy favor the application of the rule to the case of such depositors. WALLACE, J. Id. In a similar case in the United States Supreme Court (National Bank of Commonwealth *v.* Mechanics' National Bank, 94 U. S. 437, 24 L. ed. 176, above cited), it was held that a demand for the interest was properly made.

8. If such interest be not paid by the Comptroller at the time of the repayment of the deposit, an action not only lies to recover the former, but, being a liquidated sum at the time, to recover interest thereon also. National Bank of Commonwealth *v.* Mechanics' National Bank, 94 U. S. 437, 24 L. ed. 176.

9. The United States, as a creditor of a national bank, is not entitled to a priority of payment, out of its assets, over other creditors. Cook County National Bank *v.* United States, 107 U. S. 445, 27 L. ed. 537, 2 Sup. Ct. Rep. 561.

10. Where a national bank was put into insolvency by the Comptroller of the Currency, and a creditor, whose claim was disputed, recovered judgment, seven years after, for an amount much larger than the amount of his claim at the time of the failure, Held, that the dividend should be calculated and paid upon the amount of his claim at the time of the failure of the bank, and not the amount found due when the same was adjudicated. United States *ex rel.* White *v.* Knox, 111 U. S. 784, 28 L. ed. 603, 4 Sup. Ct. Rep. 686.

11. It is the intent of sections 5234–5236 to throw the entire control of an insolvent bank into the hands of the Comptroller of the Currency for the purpose of winding up its affairs. Jackson, Receiver, *v.* United States, 20 Court of Claims, 298.

§ 5237. [U. S. Comp. Stat. 1901, p. 3508.] Whenever an association against which proceedings have been instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, denies having failed to do so, it may, at any time within ten days after it has been notified of the appointment of an agent, as provided in section fifty-two hundred and twenty-seven, apply to the nearest circuit, or district, or territorial court of the United States, to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal.

See, in connection with above, note 6 to section 5133, *ante*.

The action of the Comptroller, in the appointment of a receiver of the bank, cannot be questioned by the debtors of the bank, until set aside by the bank, in contest brought by it as provided for in this section. The Comptroller appoints the receiver, and can, therefore, remove him. Cadle *v.* Baker, 20 Wall. 650, 22 L. ed. 448.

See also Moss *v.* Witzel, 108 Fed. Rep. 579.

§ 5238. [U. S. Comp. Stat. 1901, p. 3509.] All fees for protesting the notes issued by any national banking association shall be paid by the person procuring the protest to be made, and such association shall be liable therefor; but no part of the bonds deposited by such association shall be applied to the payment of such fees. All expenses of any preliminary or other examinations into the condition of any association shall be paid by such association. All expenses of any receivership shall be paid out of the assets of such association before distribution of the proceeds thereof.

See Act of June 30, 1876, *post.*

§ 5239. [U. S. Comp. Stat. 1901, p. 3515.] If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district, or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation.

See Act of June 30, 1876, *post.*

1. A suit against the bank is abated by a decree dissolving the corporation, and forfeiting its rights and franchises in an action brought by the Comptroller for that purpose. National Bank *v.* Colby, 21 Wall. 609, 22 L. ed. 687.

2. The Comptroller is the only person who can bring a suit to have the charter of a national bank forfeited for violation of its organic act. Shoemaker *v.* National Mechanics' Bank, 2 Abb. (U. S.) 416, Fed. Cas. No. 12,801; to same effect, Union, etc., *v.* Rocky Mountain National Bank, 1 Colo. 531.

3. An action to enforce the liability of a director of a national bank for misconduct

in office, as provided for in this section, should in general be brought by the bank, when capable of acting; but if it refuses, the stockholders will be permitted to sue in a court of equity in their own names, making the corporation a defendant; and this course of proceeding is also allowed where it appears that the corporation is still under the control of those who must be made defendants. In the latter case a demand upon the corporation is unnecessary. If, owing to insolvency, the corporation be in the hands of a receiver, so that it cannot sue, the receiver may maintain the action. If he refuses, or is himself involved, a person aggrieved may sue. When the shareholders are numerous the action may be brought by one or more in behalf of all, and the bank and receiver are necessary parties—the latter, as it is through him that the amount which may be adjudged against the directors is to be collected and paid over. When the action is brought by a stockholder or stockholders, while the bank is in a receiver's hands, the complaint need not allege a demand on the Comptroller, and his refusal to direct the receiver to sue, or a demand upon the refusal of the latter to do so, for this section does not require that the action be instituted by the Comptroller, and the liability of the directors of corporation for breaches of trust and the jurisdiction of courts of equity to afford redress to the corporation, and in proper cases to its shareholders, for such wrongs, exists independently of any statute. Brinckerhoff *v.* Bostwick, 88 N. Y. 52, reversing same case, 23 Hun, 237; Ackerman *v.* Halsey, 37 N. J. Eq. 356. See, also, Conway *v.* Halsey, 44 N. J. Law, 462.

4. The officers of a national bank are not personally responsible to creditors for losses incurred in transactions made in good faith, and appearing profitable at the time of the transactions. Witters, Receiver, *v.* Sowles *et al.*, 31 Fed. Rep. 1.

5. Directors are not liable to the common-law liability for inattention to official duties in preventing a disastrous loan, if such loan is made without their actual knowledge. Id.

6. A director who sells his stock, and receives the money therefor, and orally resigns before the expiration of his term of office, ceases to be a director, and is not liable for the subsequent loss through the negligence of directors. Movius, Receiver, *v.* Lee, 30 Fed. Rep. 298.

7. A president of a national bank, on leave of absence for good cause, is not liable for the negligence of other officers or directors in his absence. Id.

8. Directors are not liable for the secret illegal transactions of one of the directors. Id.

9. To show ground for forfeiting its charter it must be shown that in carrying on the business of the bank some act or transaction in violation of the provisions of title 62 of the U. S. R. S. was done, and that the directors were either the doers thereof or knowingly permitted it to be done by some officer, agent or servant of the bank. Trenholm *v.* Commercial Bank, 38 Fed. Rep. 323.

10. The Comptroller has not the right to decide that the directors shall be proceeded against to enforce the liability created by this section, until he has, by a proper proceeding in a United States court, had it determined that acts have been done which justified the forfeiture of the bank's charter. Neither the Comptroller nor any one else can determine that such acts do exist, and after the proper court has decided that they exist it is still a question for the Comptroller to determine whether the receiver shall proceed to enforce the director's liability. Welles *v.* Graves, 41 Fed. Rep. 459.

11. The right to recover under this section, of a bank director, the damages sus-

tained in consequence of an excessive loan under section 5200 is in no wise affected by the fact that the Comptroller has or has not procured a forfeiture of the charter. Stephens *v.* Overstoltz, 43 Fed. Rep. 771.

12. The provisions of the National Banking Act enter as part into the contracts of creditors with national banks, and the provisions creating the liability of directors, and prescribing the proceedings to enforce the liability, when guilty of violations of the act, are exclusive of other liability and proceedings. In view of this section and section 5234, a court of equity cannot entertain the suit of a creditor against the directors of a national bank. Only the receiver, under the direction of the Comptroller, can bring suit. Nat. Exch. Bank *v.* Peters, 43 Fed. Rep. 13.

13. Where officers attest an official report wherein are included assets previously reported by the Comptroller as doubtful, and a third person buys the bank stock on the faith of such false statement, they are liable to such buyer for depreciation of such stock because of such shrinkage in value but not liable for loss by impairment unknown to the officers. Taylor *v.* Thomas, 124 App. Div. 53.

14. This section affords the exclusive rule measuring the right to recover damages from directors for a loss caused by their violation of any provision of the National Banking Act. Yates *v.* Jones Nat. Bank, 206 U. S. 158.

§ 5240. The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every member bank at least twice in each calendar year and oftener if considered necessary: *Provided, however,* That the Federal Reserve Board may authorize examination by the State authorities to be accepted in the case of State banks and trust companies and may at any time direct the holding of a special examination of State banks or trust companies that are stockholders in any Federal reserve bank. The examiner making the examination of any national bank, or of any other member bank, shall have power to make a thorough examination of all the affairs of the bank and in doing so he shall have power to administer oaths and to examine any of the officers and agents thereof under oath and shall make a full and detailed report of the condition of said bank to the Comptroller of the Currency.

The Federal Reserve Board, upon the recommendation of the Comptroller of the Currency, shall fix the salaries of all bank examiners and make report thereof to Congress. The expense of the examinations herein provided for shall be assessed by the Comptroller of the Currency upon the banks examined in proportion to assets or resources held by the banks upon the dates of examination of the various banks.

In addition to the examinations made and conducted by the Comptroller of the Currency, every Federal reserve bank may, with the approval of the Federal reserve agent or the Federal Reserve Board, pro-

vide for special examination of member banks within its district. The expense of such examinations shall be borne by the bank examined. Such examinations shall be so conducted as to inform the Federal reserve bank of the condition of its member banks and of the lines of credit which are being extended by them. Every Federal reserve bank shall at all times furnish to the Federal Reserve Board such information as may be demanded concerning the condition of any member bank within the district of the said Federal reserve bank.

No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized.

The Federal Reserve Board shall, at least once each year, order an examination of each Federal Reserve bank, and upon joint application of ten member banks the Federal Reserve Board shall order a special examination and report of the condition of any Federal Reserve bank.

(As amended by Federal Reserve Act, § 21, *post.*)
See Act of July 12, 1882, § 3, *post.*

§ **5241.** [U. S. Comp. Stat. 1901, p. 3517.] No association shall be subject to any visitorial powers other than such as are authorized by this Title, or are vested in the courts of justice.

1. The officers of a national bank cannot be compelled by county officials to produce the books of the bank for the former's inspection, for the purpose of obtaining the necessary information for imposing a tax on deposits. First National Bank *v.* Hughes, Browne's N. B. Cas. 176, Fed. Cas. No. 4,811.
2. The Supreme Court of New York has jurisdiction in the case of a national bank where the charter has expired by limitation, to direct its officers to furnish certified statement showing its assets and certain specified facts relating thereto. Tuttle *v.* Iron Nat. Bank of Plattsburgh, 170 N. Y. 9, 62 N. E. 761, aff'g 67 App. Div. 627, 73 N. Y. Supp. 1150.
3. Any attempt by a State to define the duties of a national bank is void wherever conflicting with Federal law. Davis *v.* Elmira Sav. Bank, 161 U. S. 283, 40 L. ed. 701, 16 Sup. Ct. Rep. 502.

§ **5242.** [U. S. Comp. Stat. 1901, p. 3517.] All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mort-

gages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void, and no attachment, injunction, or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court.

1. The words, "act of insolvency," in this section are to be taken in their usual sense and not simply such an act as authorizes the Comptroller to appoint a receiver. Irons *v.* Manufacturers' National Bank, 6 Biss. 301, 27 Fed. Rep. 591.

2. To make transfers, assignments, deposits and payments void under this section, it is only necessary that the insolvency should be in contemplation of the bank making the transfers, etc., and not that it should also be known to or contemplated by the party to whom they are made. Case, Receiver, *v.* Citizens' Bank, 2 Woods, 23, Fed. Cas. No. 2,489; Peckham *v.* Burroughs, 3 Story, 544, Fed. Cas. No. 10,897.

3. The respective rights and liabilities existing between the bank and its creditors and debtors became fixed when its insolvency occurred, and it passed into the hands of the receiver appointed by the Comptroller of the Currency. All the property and assets of the association then became a fund legally dedicated, first, to the satisfaction of any claim of the United States government for any deficiency in the proceeds of the bonds pledged for the redemption of its notes, to meet the amount necessary to be expended for that purpose; and second, for a ratable distribution of the balance among its general creditors, upon the principle of equality. Balch *v.* Wilson, 25 Minn. 299, 33 Am. Rep. 467.

4. The word "insolvency," as used in this section, is synonymous with the same word as used in the (late) bankrupt act, and means a present inability to pay in the ordinary course of business. Case, Receiver, *v.* Citizens' Bank, 2 Woods, 23, Fed. Cas. No. 2,489.

5. The provisions of this section prohibiting the issuing of an attachment, etc., against a national bank with property, before final judgment, applies only to an association which has become insolvent, or to one about to become so, as specified in the preceding part of the section. Robinson *v.* National Bank of New Berne, 81 N. Y. 385, 37 Am. Rep. 508; People's Bank *v.* Mechanics' National Bank, 62 How. Pr. 422; Market National Bank *v.* Pacific National Bank, 2 Civ. Pro. R. 330.

6. An attachment issued against an insolvent national bank, or one in contemplation of insolvency, or which has committed an act of insolvency, is illegally issued in violation of this section, and cannot be made valid by the subsequent acquisition by the bank of further capital. Raynor *et al. v.* Pacific National Bank, 93 N. Y. 373.

7. And when such bank after the issuing of an attachment pays a large amount of its debts in full, this fact will not estop it from setting up its insolvency to avoid

the attachment, at least where the application to vacate is made for the benefit of the remaining creditors, and not the stockholders. Id.

8. This section is not repealed by the Act of Congress of July 12, 1883, providing that the jurisdiction for suits thereafter brought against national banks shall be the same as for suits against State banks, and repealing laws inconsistent therewith. This section is not inconsistent with such provision. Id.

9. The property of a national bank, attached, at the suit of an individual creditor, cannot be sold on an attachment levied after the bank became insolvent, when the same property is claimed by a receiver of the bank, who was subsequently appointed. National Bank *v.* Colby, 21 Wall. 609, 22 L. ed. 687.

10. The preference of one creditor to another by a national bank, mentioned in the foregoing section, is a preference given to the creditor to secure or pay a pre-existing debt. When a national bank, being embarrassed, receives a loan of money, or other valuable material aid, from a person who knows its embarrassed state, on condition that the party making the loan or giving the aid shall be secured therefor, and the security is accordingly given by pledging a part of the assets of the bank, Held, this is not giving him a preference over other creditors within the meaning of this section. "If a customer or friend of a bank, knowing it to be embarrassed and in need of assistance, proffers it, for instance, a loan of $50,000 in cash, on receiving security for the amount by a transfer of a part of its portfolio, that cannot be fairly construed as giving him a preference over other creditors. Other creditors are not injured by such a transaction; for the securities that such a creditor takes out he leaves an equivalent in cash. He becomes a creditor solely on condition of receiving security. . . . It clearly was not the purpose of the act to forbid the bank from giving security to its friends for means to be advanced on the spot or in the future." Woods, J. Casey, Receiver, *v.* La Société de Credit Mobilier de Paris *et al.*, 2 Woods, 77, Fed. Cas. No. 2,496.

11. A return of *nulla bona* upon an execution against the bank is ample evidence of its insolvency. Wheelock *v.* Kost, 77 Ill. 296.

12. An attachment cannot issue from a Circuit Court of the United States, in an action against a national bank before final judgment. Pacific National Bank *v.* Mixter, 124 U. S. 721, 31 L. ed. 567, 8 Sup. Ct. Rep. 718.

13. A receiver of a national bank can acquire no right to property in possession of bank which it does not own, as against the owner. Section 5242 of U. S. Rev. Stat. was not intended to protect such receiver's possession as against the owner. Further held, that section 5242 does not prohibit the issuing of a requisition to the sheriff to take possession of the property in question. Corn Exchange Bank *v.* Blye, 101 N. Y. 303, 4 N. E. 625.

14. Certain creditors whose claims were disputed by a national bank attached its property and began suit to dissolve the same; the president and a director became sureties on the bank's bond of indemnification. The bank transferred $100,000 to such sureties. Before these transactions the bank had suspended but had resumed business with permission of the Comptroller of the Currency, but had become insolvent soon after the above transactions. Held, that the transfer of the $100,000 was not made after the commission of an act of insolvency or in contemplation thereof, or to prevent the application of assets as prescribed by the banking act. Price, Receiver, *v.* Coleman *et al.*, 22 Fed. Rep. 694.

15. The transfer of the assets of a bank to a creditor whereby he secures a preference over the other creditors, if made after a vote of the directors to go into liquida-

tion, will be presumed to be made with fraudulent intent. National Security Bank *v.* Price, Receiver, 22 Fed. Rep. 697.

16. The general policy of the banking law, which forbids any kind of preference in case of insolvency and requires the entire assets to be preserved for equitable distribution, does not affect a depositor's right to rescind for fraud. A depositor who deposits a draft in ignorance of the insolvency of a national bank, may rescind and pursue the collection of the draft, if the proceeds have not been mingled with the general assets of the insolvent bank. Cragie *v.* Smith, 14 Abb. N. C. 409.

17. "In order to uphold an action under this section, there should be some satisfactory evidence that the cashier or other officer actually paid the money of the bank in contemplation of insolvency for the purpose of giving a preference to the payee, and with a view to prevent the application of the assets of the bank to the creditors generally, as provided in the National Banking Act." Hayes *v.* Beardsley, 136 N. Y. 299, 32 N. E. 855, aff'g 43 N. Y. St. Rep. 744, 17 N. Y. Supp. 404.

18. In the above cited case (Hayes *v.* Beardsley, *supra*), the insolvency of the bank was so concealed by the cashier that none of its directors had any suspicion thereof, and it was not discovered by the bank examiner. Held, that under the circumstances the fact that defendant was a director did not, as a matter of law, charge him with liability for the payments made to him; that it having been found that he acted in good faith and in ignorance of any wrongdoing or of the bank's insolvency, payments made to him were to be tested under said provisions like payments made to other creditors. Hayes *v.* Beardsley, *supra.*

19. Where a national bank on the 20th day of a month, telegraphs its acceptance of a draft drawn on it by a national bank in another State and on the following day the drawer fails, and the day after (22d), the acceptor pays the amount of the draft. Held, that in the absence of anything indicating that the action of the payee, drawer or drawee was in contemplation of the insolvency of the drawer or that they had any intimation of its impending failure, that the transaction was not within the inhibition of this section, and that the acceptor had a right to apply the proceeds of collections made by it for the drawee, in its hands at the date of acceptance to the payment of the draft. *In re* Armstrong, 41 Fed. Rep. 384; see, also, Armstrong *v.* Chemical Nat. Bank, 41 Fed. Rep. 234.

20. The indorser of a note which is discounted by a national bank and which matures after the bank becomes insolvent and a receiver is appointed, is entitled to set off against the note the amount of his deposits in the bank at the time of its failure. The allowance of such set-off does not violate section 5242. Yardley *v.* Clothier, 17 L. R. A. 642, 2 U. S. Ct. of App. Rep. 349, 3 U. S. App. 207, 51 Fed. Rep. 506.

21. The provisions of U. S. Rev. Stat., § 5242, against attachment or other provisional remedy or execution, except after final judgment, against national banks applies to solvent as well as insolvent banks. This provision was not affected by Act of July 12, 1882, U. S. Stat. at L. 163, ch. 290, § 4, which prescribes the forum and does not relate to the provisional remedies to be had therein. Solvency of bank is to be presumed in absence of proof to the contrary. Van Reed *v.* People's Nat. Bank, 198 U. S. 554, 173 N. Y. 314.

22. After insolvency is declared, a national bank cannot do further business, but its corporate existence continues for certain purposes. Chemical Bank *v.* Hartford Deposit Co., 161 U. S. 7, 40 L. ed. 598, 16 Sup. Ct. Rep. 439.

23. Remittances made by one bank to another in the ordinary course of business,

will not be taken as made in contemplation of insolvency. McDonald *v.* Chemical Nat. Bank, 174 U. S. 618, 43 L. ed. 1109, 19 Sup. Ct. Rep. 787.

24. As to clearing house exchanges see Yardley *v.* Philler, 167 U. S. 357, 42 L. ed. 196, 17 Sup. Ct. Rep. 835.

25. Attachment against national bank as garnishee is not an attachment within section 5242 against the bank. Earle *v.* Conway, 178 U. S. 456, 44 L. ed. 1149, 20 Sup. Ct. Rep. 918.

26. Where dividends were paid out of capital when bank was not insolvent, the owner of the stock believing them to be out of profits, receiver cannot recover them. McDonald *v.* Williams, 174 U. S. 397, 43 L. ed. 1022, 19 Sup. Ct. Rep. 743.

27. A national bank cannot be made liable for the debts of a partnership shares in which it has become a qualified owner of by foreclosure of its lien upon them for a debt. Merchants' Nat. Bank *v.* Wehrmann, 202 U. S. 295.

28. A national bank whether solvent or insolvent is exempt from attachment before judgment. A State court cannot gain jurisdiction over a foreign national bank by attaching the bank's property within that State. Pacific Nat. Bank *v.* Mixter, 124 U. S. 721.

29. It was a custom between defendant bank and a national bank in the same town for each to cash checks drawn on the other during the day's business, and after banking hours to take an account of such payments, and for the bank against which the balance was found to give a duebill for the amount, which was taken up on the next day by cash or a draft, and the checks were then surrendered for debit against the drawers. Two drafts given defendant in settlement of such balances on successive days having been dishonored, defendant's president called on the cashier of the national bank after banking hours on Saturday and requested collateral to cover the amount, which was given, amounting to $5,500. The national bank was then insolvent, and did not again open its doors, and that it could not do so was then known to the cashier. Held, that whatever other remedy it might have had, defendant by demanding collateral elected to affirm the relation of debtor and creditor between the two banks; that the transfer of the collateral by the cashier of the national bank was at least in contemplation of an act of insolvency, and with a view of preferring defendant as a creditor, within the meaning of Revised Statutes, section 5242, and was void under said section, regardless of whether or not defendant knew the condition of the other bank. Ball *v.* German Bank of Carroll County, 187 Fed. Rep. 750.

30. Where a national bank, after or in contemplation of an act of insolvency, made a transfer of notes to a creditor as a preference, which was void under Rev. St., § 5242, the receiver may at his election maintain an action at law against the creditor for their conversion. Ball *v.* German Bank of Carroll County, 187 Fed. Rep. 750.

31. Where sight drafts attached to bills of lading were delivered to a bank for collection and remission of proceeds, the relation of trustee and *cestui que trust* was established between the bank and the owner of such proceeds, which might be followed, on the bank's insolvency, into the hands of its receiver, if they could be traced. American Can Co. *v.* Williams, 178 Fed. Rep. 420.

§ 5243. [U. S. Comp. Stat. 1901, p. 3517.] All banks not organized and transacting business under the national currency laws, or under this Title, and all persons or corporations doing the business of bankers, brokers, or savings institutions, except savings banks authorized by

Congress to use the word "national" as a part of their corporate name, are prohibited from using the word "national" as a portion of the name or title of such bank corporation, firm, or partnership; and any violation of this prohibition committed after the third day of September, eighteen hundred and seventy-three, shall subject the party chargeable therewith to a penalty of fifty dollars for each day during which it is committed or repeated.

TITLE XXXV

INTERNAL REVENUE

CHAPTER VIII

Banks and Bankers

§ **3407.** [U. S. Comp. Stat. 1901, p. 2246.] Every incorporated or other bank, and every person, firm or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where the money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker.

§§ **3408, 3409.**

[These two sections relating to taxes on capital and deposits of banks, bankers and national banking associations, were superseded and repealed by Act of February 8, 1875, § 19, and Act of March 3, 1883, § 1, *post.*]

§ **3410.** [U. S. Comp. Stat. 1901, p. 2248.] The capital of any State

bank or banking association which has ceased or shall cease to exist, or which has been or shall be converted into a national bank, shall be assumed to be the capital as it existed immediately before such bank ceased to exist or was converted as aforesaid.

See Act of March 3, 1883, § 1, *post.*

§ **3411.** [U. S. Comp. Stat. 1901, p. 2248.] Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury shall prescribe, it shall be exempt from any tax upon such circulation.

See Act of July 12, 1882, §§ 6 and 8, *post.*

This section does not lay a direct tax. Congress having undertaken, in the exercise of undisputed constitutional power, to provide a currency for the whole country, may secure the benefit of it to the people by appropriate legislation, and to that end may restrain, by suitable enactments, the circulation of any notes not issued under its authority. Veazie Bank *v.* Fenno, 8 Wall. 533, 19 L. ed. 482.

The provisions in section 3411, Revised Statutes, exempting banks from taxation on circulation does not relate to national banks, but to State banks only. Merchants Nat. Bank *v.* United States, 214 U. S. 33.

§ **3412.** [U. S. Comp. Stat. 1901, p. 2249.] Every national banking association, State bank or State banking association shall pay a tax of ten per centum on the amount of notes of any person, or of any State bank or State banking association used for circulation and paid out by them.

See Act of February 8, 1875, §§ 19 and 20, *post.*

§ **3413.** [U. S. Comp. Stat. 1901, p. 2249.] Every national banking association, State bank, or banker, or association, shall pay a tax of ten per centum on the amount of notes of any town, city, or municipal corporation paid out by them.

See Act of February 8, 1875, §§ 19, 20, *post.*

"The only question presented is as to the constitutionality of section 3413 of the Revised Statutes, the objection being that the tax is virtually laid upon an instrumentality of the State of Arkansas.

"We think this case comes strictly within the principles settled in Veazie Bank *v.* Fenno, 8 Wall. 533, 19 L. ed. 482, where it was distinctly held that the tax imposed by that section on national and State banks, for paying out the notes of individuals or State banks used for circulation, was not unconstitutional.

"The reason is thus stated by Mr. Chief Justice CHASE: 'Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may constitutionally secure the benefit of it to the people by appropriate legislation. To this end Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end Congress may restrain, by suitable enactments, the circulation as money any notes not issued under its authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile' (p. 549, 19 L. ed. 488).

"The tax thus laid is not on the obligation, but on its use in a particular way. As against the United States, a State municipality has no right to put its notes in circulation as money. It may execute its obligations, but cannot, against the will of Congress, make them money.

"The tax is on the notes paid out, that is, made use of as a circulating medium. Such a use is against the policy of the United States. Therefore the banker who helps to keep up the use by paying them out, that is, employing them as the equivalent of money in discharging his obligations, is taxed for what he does. The taxation is no doubt intended to destroy the use; but that, as has just been seen, Congress has the power to do." WAITE, Ch. J. Merchants' Nat. Bank *v.* United States, 101 U. S. 1, 25 L. ed. 979.

§ 3414. [U. S. Comp. Stat. 1901, p. 2250.] A true and complete return of the monthly amount of circulation, of deposits, and of capital, as aforesaid, and of the monthly amount of notes or persons, town, city, or municipal corporations, State banks, or State banking associations paid out as aforesaid for the previous six months, shall be made and rendered in duplicate on the first day of December and the first day of June by each of such banks, associations, corporations, companies, or persons, with a declaration annexed thereto, under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and one copy shall be transmitted to the collector of the district in which any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner of Internal Revenue.

See Act of February 8, 1875, § 21, *post.*
See Act of March 3, 1883, *post.*

§ **3415.** [U. S. Comp. Stat. 1901, p. 2250.] In default of the returns provided in the preceding section, the amount of circulation, deposit, capital, and notes of persons, town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Commissioner of Internal Revenue, upon the best information he can obtain. And for any refusal or neglect to make return and payment, any such bank, association, corporation, company, or person so in default shall pay a penalty of two hundred dollars, besides the additional penalty and forfeitures provided in other cases.

See Act of March 3, 1883, *post.*

§ **3416.** [U. S. Comp. Stat. 1901, p. 2251.] Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed five per centum of the capital before such conversion of such State bank or banking association.

§ **3417.** [U. S. Comp. Stat. 1901, p. 2251.] The provisions of this chapter, relating to the tax on the deposits, capital and circulation of banks, and to their returns, except as contained in sections thirty-four hundred and ten, thirty-four hundred and eleven, thirty-four hundred and twelve, thirty-four hundred and thirteen, and thirty-four hundred and sixteen, and such parts of sections thirty-four hundred and fourteen and thirty-four hundred and fifteen as relate to the tax of ten per centum on certain notes, shall not apply to associations which are taxed under and by virtue of title "National Banks."

(As amended by Act of February 18, 1875.)

See Act of March 3, 1883; Act of March 1, 1879, § 22.

1. United States securities are exempted from local taxation by the following section of Title XLII, U. S. R. S., entitled "The Public Debt:"

§ 3701. [U. S. Comp. Stat. 1901, p. 2480.] All stocks, bonds, treasury notes, and other obligations of the United States shall be exempt from taxation by or under State or municipal or local authority.

ADDITIONAL AND AMENDATORY ACTS

1874-1914

ADDITIONAL AND AMENDATORY ACTS

Act of June 20, 1874

An act fixing the amount of the United States notes, providing for a redistribution of the national bank currency, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, eighteen hundred and sixty-four, shall hereafter be known as "the National Bank Act."

§ **2.** That section thirty-one [1] of "the National Bank Act" be so amended that the several associations therein provided for shall not hereafter be required to keep on hand any amount of money whatever by reason of the amount of their respective circulations; but the moneys required by said section to be kept at all times on hand shall be determined by the amount of deposits in all respects, as provided for in said section.

See for repeal or modification of above, section 20 of Federal Reserve Act, *post*.

[1] This "section thirty-one" refers to the old division by sections in the Act of June 3, 1864; it refers to "reserve" and was incorporated in U. S. Rev. Stat., §§ 5191, 5192. The "section thirty-two" hereinafter referred to was incorporated in U. S. Rev. Stat., § 5195. The U. S. Rev. Stat. were enacted 1874, and embraced the laws in force Dec. 1, 1873.

§ **3.** That every association organized, or to be organized, under the provisions of the said act, and of the several acts amendatory thereof, shall at all times keep and have on deposit in the Treasury of the United States, in lawful money of the United States, a sum equal to five per centum of its circulation, to be held and used for the redemption of such circulation; which sum shall be counted as a part of its lawful reserve, as provided in section two of this act; and when the circulating notes of any such associations, assorted or unassorted shall be presented for redemption, in sums of one thousand dollars or any multiple thereof, to the Treasurer of the United States, the same shall be redeemed in United States notes. All notes so redeemed shall be charged by the Treasurer of the United States to the respective associations issuing the same, and he shall notify them severally on the first day of each month, or oftener, at his discretion, of the amount of such redemptions; and whenever such redemptions for any association shall amount to the sum of five hundred dollars, such association so notified shall forthwith deposit with the Treasurer of the United States a sum in United States notes equal to the amount of its circulating notes so redeemed. And all notes of national banks, worn, defaced, mutilated, or otherwise unfit for circulation, shall, when received by any assistant treasurer or at any designated depository of the United States, be forwarded to the Treasurer of the United States for redemption as provided herein. And when such redemptions have been so reimbursed, the circulating notes so redeemed shall be forwarded to the respective associations by which they were issued; but if any of such notes are worn, mutilated, defaced, or rendered otherwise unfit for use, they shall be forwarded to the Comptroller of the Currency and destroyed, and replaced as now provided by law: *Provided,* That each of said associations shall reimburse to the Treasury the charges for transportation, and the costs for assorting such notes; and the associations hereafter organized shall also severally reimburse to the Treasury the cost of engraving such plates as shall be ordered by each association respectively; and the amount assessed upon each association shall be in proportion to the circulation redeemed, and be charged to the fund on deposit with the Treasurer: *And provided further,* That so much of section thirty-two [2] of said National Bank Act requiring or permitting the redemption of its circulating notes

[2] See note to section 2, *ante*.

elsewhere than at its own counter, except as provided for in this section, is hereby repealed.

See for repeal or modification of above, section 20 of Federal Reserve Act, *post*.

§ **4.** That any association organized under this act or any of the acts of which this is an amendment, desiring to withdraw its circulating notes, in whole or in part, may, upon the deposit of lawful money with the Treasurer of the United States in sums of not less than nine thousand dollars, take up the bonds which said association has on deposit with the Treasurer for the security of such circulating notes, which bonds shall be assigned to the bank in the manner specified in the nineteenth section of the National Bank Act; and the outstanding notes of said association, to an amount equal to the legal-tender notes deposited, shall be redeemed at the Treasury of the United States, and destroyed as now provided by law: *Provided*, That the amount of the bonds on deposit for circulation shall not be reduced below fifty thousand dollars.

See for modification of above, section 17 of Federal Reserve Act, *post*.

§ **5.** That the Comptroller of the Currency shall, under such rules and regulations as the Secretary of the Treasury may prescribe, cause the charter numbers of the association to be printed upon all national bank-notes which may be hereafter issued by him.

§ **6.** That the amount of United States notes outstanding and to be used as a part of the circulating medium shall not exceed the sum of three hundred and eighty-two million dollars, which said sum shall appear in each monthly statement of the public debt, and no part thereof shall be held or used as a reserve.

§ **7.** That so much of the act entitled "An act to provide for the redemption of the three per centum temporary loan certificates, and for an increase of national bank-notes," as provides that no circulation shall be withdrawn under the provisions of section six of said act, until after fifty-four millions granted in section one of said act shall have been taken up, is hereby repealed; and it shall be the duty of the

Comptroller of the Currency, under the direction of the Secretary of the Treasury, to proceed forthwith, and he is hereby authorized and required, from time to time, as applications shall be duly made therefor, and until the full amount of fifty-five million dollars shall be withdrawn, to make requisitions upon each of the national banks described in said section, and in the manner therein provided, organized in States having an excess of circulation, to withdraw and return so much of their circulation as by said act may be apportioned to be withdrawn from them or, in lieu thereof, to deposit in the Treasury of the United States lawful money sufficient to redeem such circulation; and upon the return of the circulation required, or the deposit of lawful money, as herein provided, a proportionate amount of the bonds held to secure the circulation of such association as shall make such return or deposit shall be surrendered to it.

§ 8. That upon the failure of the national banks upon which requisition for circulation shall be made, or of any of them, to return the amount required, or to deposit in the Treasury lawful money to redeem the circulation required, within thirty days, the Comptroller of the Currency shall at once sell, as provided in section forty-nine of the National Currency Act, approved June third, eighteen hundred and sixty-four, bonds held to secure the redemption of the circulation of the association or associations which shall so fail, to an amount sufficient to redeem the circulation required of such association or associations, and with the proceeds, which shall be deposited in the Treasury of the United States, so much of the circulation of such association or associations shall be redeemed as will equal the amount required and not returned; and if there be any excess of proceeds over the amount required for such redemption, it shall be returned to the association or associations whose bonds shall have been sold. And it shall be the duty of the Treasurer, assistant treasurers, designated depositaries, and national bank depositaries of the United States, who shall be kept informed by the Comptroller of the Currency of such associations as shall fail to return circulation as required, to assort and return to the Treasury for redemption the notes of such associations as shall come into their hands until the amount required shall be redeemed, and in like manner to assort and return to the Treasury, for redemption, the notes of such national banks as have failed, or gone into voluntary liquidation

for the purpose of winding up their affairs, and of such as shall hereafter so fail or go into liquidation.

§ **9.** That from and after the passage of this act it shall be lawful for the Comptroller of the Currency, and he is hereby required to issue circulating notes, without delay, as applications therefor are made, not to exceed the sum of fifty-five million dollars, to associations organized, or to be organized, in those States and Territories having less than their proportion of circulation, under an apportionment made on the basis of population and of wealth, as shown by the returns of the census of eighteen hundred and seventy; and every association hereafter organized shall be subject to, and be governed by, the rules, restrictions, and limitations, and possess the rights, privileges, and franchises, now or hereafter to be prescribed by law as to national banking associations, with the same power to amend, alter, and repeal provided by "the National Bank Act;" *Provided,* That the whole amount of circulation withdrawn and redeemed from banks transacting business shall not exceed fifty-five million dollars and that such circulation shall be withdrawn and redeemed as it shall be necessary to supply the circulation previously issued to the banks in those States having less than their apportionment: *And provided further,* That not more than thirty million dollars shall be withdrawn and redeemed as herein contemplated during the fiscal year ending June thirtieth, eighteen hundred and seventy-five.

Approved June 20, 1874.

See Act of July 12, 1882, *post;* Act of July 14, 1890, *post;* Act of March 14, 1900, *post.*

Act of January 14, 1875

An act to provide for the resumption of specie payments

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby authorized and required, as rapidly as practicable, to cause to be coined at the mints of the United States, silver coins of the denominations of ten, twenty-five, and fifty cents, of standard

value, and to issue them in redemption of an equal number and amount of fractional currency of similar denominations, or, at his discretion, he may issue such silver coins through the mints, the sub-treasuries, public depositaries, and post-offices of the United States; and upon such issue, he is hereby authorized and required to redeem an equal amount of such fractional currency, until the whole amount of such fractional currency outstanding shall be redeemed.

§ **2.** That so much of section three thousand five hundred and twenty-four of the Revised Statutes of the United States as provides for a charge of one-fifth of one per centum for converting standard gold bullion into coin is hereby repealed; and hereafter no charge shall be made for that service.

§ **3.** That section five thousand one hundred and seventy-seven of the Revised Statutes of the United States, limiting the aggregate amount of circulating notes of national banking associations, be, and is hereby, repealed; and each existing banking association may increase its circulating notes in accordance with existing law without respect to said aggregate limit; and new banking associations may be organized in accordance with existing law without respect to said aggregate limit; and the provisions of law for the withdrawal and redistribution of national bank currency among the several States and Territories are hereby repealed. And whenever, and so often, as circulating notes shall be issued to any such banking association, so increasing its capital or circulating notes, or so newly organized as aforesaid, it shall be the duty of the Secretary of the Treasury to redeem the legal tender United States notes in excess only of three hundred million of dollars, to the amount of eighty per centum of the sum of national bank notes so issued to any such banking association as aforesaid, and to continue such redemption as such circulating notes are issued until there shall be outstanding the sum of three hundred million dollars of such legal tender United States notes, and no more. And on and after the first day of January, Anno Domini eighteen hundred and seventy-nine, the Secretary of the Treasury shall redeem in coin, the United States legal-tender notes then outstanding, on their presentation for redemption at the office of the assistant treasurer of the United States in the city of New York, in sums of not less than fifty dollars. And to enable the Secretary

of the Treasury to prepare and provide for the redemption in this act authorized or required, he is authorized to use any surplus revenues, from time to time, in the Treasury not otherwise appropriated, and to issue, sell, and dispose of, at not less than par, in coin, either of the description of bonds of the United States described in the act of Congress approved July fourteenth, eighteen hundred and seventy, entitled "An act to authorize the refunding of the national debt," with like qualities, privileges, and exemptions, to the extent necessary to carry this act into full effect, and to use the proceeds thereof for the purposes aforesaid. And all provisions of law inconsistent with the provisions of this act are hereby repealed.

Approved January 14, 1875.

See Act of March 3, 1887.

Act of January 19, 1875

An act to remove the limitation restricting the circulation of banking associations issuing notes payable in gold

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of section five thousand one hundred and eighty-five of the Revised Statutes of the United States as limits the circulation of banking associations organized for the purpose of issuing notes payable in gold, severally to one million dollars, be and the same is hereby repealed; and each of such existing banking associations may increase its circulating notes, and new banking associations may be organized in accordance with existing law, without respect to such limitation.

Approved January 19, 1875.

Act of February 8, 1875

EXTRACTS FROM

An act to amend existing customs and international laws, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, . . .

§ **19.** That every person, firm, association other than national bank associations, and every corporation, State bank or State banking association, shall pay a tax of ten per centum on the amount of their own notes used for circulation and paid out by them.

§ **20.** That every such person, firm, association, corporation, State bank or State banking association, and also every national banking association, shall pay a like tax of ten per centum on the amount of notes of any person, firm, association other than a national banking association, or of any corporation, State bank or State banking association, or of any town, city or municipal corporation, used for circulation and paid out by them.

§ **21.** That the amount of such circulating notes and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties for failure to return and pay the same, as provided by law for the return and payment of taxes on deposits, capital and circulation, imposed by the existing provisions of internal revenue law.

Approved February 8, 1875.

Act of March 3, 1875

. . . That the national-bank notes shall be printed under the direction of the Secretary of the Treasury, and upon the distinctive

or special paper which has been, or may hereafter be, adopted by him for printing United States notes.

Act of June 30, 1876

An act authorizing the appointment of receivers of national banks, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever any national banking association shall be dissolved, and its rights, privileges and franchises declared forfeited, as prescribed in section fifty-two hundred and thirty-nine of the Revised Statutes of the United States, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, in either case, appoint a receiver, who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in section fifty-two hundred and thirty-four of said statutes.

§ **2.** That when any national banking association shall have gone into liquidation under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes may be enforced by any creditor of such association, by bill in equity in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or established.

"§ **3.** That whenever any association shall have been or shall

be placed in the hands of a receiver, as provided in section fifty-two hundred and thirty-four and other sections of the Revised Statutes of the United States, and when, as provided in section fifty-two hundred and thirty-six thereof, the Comptroller of the Currency shall have paid to each and every creditor of such association, not including shareholders who are creditors of such association, whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims, and all expenses of the receivership and the redemption of the circulating notes of such association shall have been provided for by depositing lawful money of the United States with the Treasurer of the United States, the Comptroller of the Currency shall call a meeting of the shareholders of such association by giving notice thereof for thirty days in a newspaper published in the town, city, or county where the business of such association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto. At such meeting the shareholders shall determine whether the receiver shall be continued and shall wind up the affairs of such association, or whether an agent shall be elected for that purpose, and in so determining the said shareholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock in value and number of shares shall be necessary to determine whether the said receiver shall be continued, or whether an agent shall be elected. In case such majority shall determine that the said receiver shall be continued, the said receiver shall thereupon proceed with the execution of his trust, and shall sell, dispose of, or otherwise collect the assets of the said association, and shall possess all the powers and authority, and be subject to all the duties and liabilities originally conferred or imposed upon him by his appointment as such receiver, so far as the same remain applicable. In case the said meeting shall, by the vote of a majority of the stock in value and number of shares, determine that an agent shall be elected, the said meeting shall thereupon proceed to elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the person who shall receive votes representing at least a majority of stock in value and number shall be declared the agent for the purposes hereinafter provided; and whenever any of the shareholders of the association shall, after the election of such agent, have executed and filed a bond to the satisfaction of the Comptroller of

the Currency, conditioned for the payment and discharge in full of each and every claim that may thereafter be proved and allowed by and before a competent court, and for the faithful performance of all and singular the duties of such trust, the Comptroller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets of such association then remaining in the hands or subject to the order and control of said Comptroller and said receiver, or either of them; and for this purpose said Comptroller and said receiver are hereby severally empowered and directed to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; and upon the execution and delivery of such instrument to the said agent the said Comptroller and the said receiver shall by virtue of this act be discharged from any and all liabilities to such association and to each and all the creditors and shareholders thereof. Upon receiving such deed, assignment, transfer, or other instrument the person elected such agent shall hold, control, and dispose of the assets and property of such association which he may receive under the terms hereof for the benefit of the shareholders of such association, and he may in his own name, or in the name of such association, sue and be sued and do all other lawful acts and things necessary to finally settle and distribute the assets and property in his hands, and may sell, compromise, or compound the debts due to such association, with the consent and approval of the circuit or district court of the United States for the district where the business of such association was carried on, and shall at the conclusion of his trust render to such district or circuit court a full account of all his proceedings, receipts, and expenditures as such agent, which court shall, upon due notice, settle and adjust such accounts and discharge said agent and the sureties upon said bond. And in case any such agent so elected shall refuse to serve, or die, resign, or be removed, any shareholder may call a meeting of the shareholders of such association in the town, city, or village where the business of the said association was carried on, by giving notice thereof for thirty days in a newspaper published in said town, city, or village, or if no newspaper is there published, in the newspaper published nearest thereto, at which meeting the shareholders shall elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and when such agent shall have received votes representing at least a majority of the stock in value and number of

shares, and shall have executed a bond to the shareholders conditioned for the faithful performance of his duties, in the penalty fixed by the shareholders at said meeting, with two sureties, to be approved by a judge of a court of record, and file said bond in the office of the clerk of a court of record in the county where the business of said association was carried on, he shall have all the rights, powers, and duties of the agent first elected as hereinbefore provided. At any meeting held as hereinbefore provided administrators or executors of deceased shareholders may act and sign as the decedent might have done if living, and guardians of minors and trustees of other persons may so act and sign for their ward or wards or *cestui que* trust. The proceeds of the assets or property of any such association which may be undistributed at the time of such meeting or may be subsequently received shall be distributed as follows:

First. To pay the expenses of the execution of the trust to the date of such payment.

Second. To repay any amount or amounts which have been paid in by any shareholder or shareholders of such association upon and by reason of any and all assessments made upon the stock of such association by the order of the Comptroller of the Currency in accordance with the provisions of the Statutes of the United States; and,

Third. The balance ratably among such stockholders, in proportion to the number of shares held and owned by each. Such distribution shall be made from time to time as the proceeds shall be received and as shall be deemed advisable by the said Comptroller or said agent.

(As amended March 2, 1897.)

§ **4.** That the last clause of section fifty-two hundred and five of said statutes is hereby amended by adding to the said section the following proviso:

"*And provided,* That if any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such shareholder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city

or town in which the bank is located, or in a newspaper published nearest thereto), to make good the deficiency; and the balance, if any, shall be returned to such delinquent shareholder or shareholders."

(Incorporated in text of section 5205, *ante.*)

§ **5.** That all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks shall stamp or write in plain letters the word "counterfeit," "altered," or "worthless," upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall upon presentation redeem such notes at the face-value thereof.

§ **6.** That all savings banks or savings and trust companies organized under authority of any act of Congress shall be, and are hereby, required to make, to the Comptroller of the Currency, and publish, all the reports which national banking associations are required to make and publish under the provisions of section fifty-two hundred and eleven, fifty-two hundred and twelve and fifty-two hundred and thirteen of the Revised Statutes, and shall be subject to the same penalties for failure to make or publish such reports as are therein provided; which penalties may be collected by suit before any court of the United States in the district in which said savings banks or savings and trust companies may be located. And all savings or other banks now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes, and of all acts of Congress applicable to national banking associations so far as the same may be applicable to such savings or other banks, provided that such savings banks now established shall not be required to have a paid-in capital exceeding one hundred thousand dollars.

Approved June 30, 1876.

Extract from an Act approved March 1, 1879

Abating semi-annual duty of insolvent banks

"That whenever and after any bank has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall so appear to him is authorized to remit so much of said tax against insolvent State and savings banks as shall be found to affect the claims of their depositors."

Act of February 14, 1880

An act authorizing the conversion of national gold banks

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any national gold bank organized under the provisions of the laws of the United States may, in the manner and subject to the provisions prescribed by section fifty-one hundred and fifty-four of the Revised Statutes of the United States, for the conversion of banks incorporated under the laws of any State, cease to be a gold bank, and become such an association as is authorized by section fifty-one hundred and thirty-three, for carrying on the business of banking, and shall have the same powers and privileges, and shall be subject to the same duties, responsibilities and rules, in all respects, as are by law prescribed for such associations: *Provided,* That all certificates of organization which shall be issued under this act shall bear the date of the original organization of each bank respectively as a gold bank.

Approved February 14, 1880.

ACT OF FEBRUARY 26, 1881

An act defining the verification of returns of national banks

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the oath or affirmation required by section fifty-two hundred and eleven of the Revised Statutes, verifying the returns made by national banks to the Comptroller of the Currency, when taken before a notary public properly authorized and commissioned by the State in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such State to administer oaths, shall be a sufficient verification as contemplated by said section fifty-two hundred and eleven. *Provided,* That the officer administering the oath is not an officer of the bank.

Approved February 26, 1881.

ACT OF JULY 12, 1882

An act to enable national banking associations to extend their corporate existence, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any national banking association organized under the acts of February twenty-fifth, eighteen hundred and sixty-three, June third, eighteen hundred and sixty-four, and February fourteenth, eighteen hundred and eighty, or under sections fifty-one hundred and thirty-three, fifty-one hundred and thirty-four, fifty-one hundred and thirty-five, fifty-one hundred and thirty-six and fifty-one hundred and fifty-four of the Revised Statutes of the United States, may, at any time within the two years next previous to the date of the expiration of its corporate existence under present law, and with the approval of the Comptroller of the Currency, to be granted as hereinafter provided, extend its period of succession by amending its articles of association for a period of not more than twenty years from the expiration of the period of succession named in said articles of associa-

tion and shall have succession for such extended period, unless sooner dissolved by the act of shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law, or unless hereafter modified or repealed.

See Act of April 12, 1902, *post.*

§ **2.** That such amendment of said articles of association shall be authorized by the consent in writing of shareholders owning not less than two-thirds of the capital stock of the association; and the board of directors shall cause such consent to be certified under the seal of the association, by its president or cashier, to the Comptroller of the Currency, accompanied by an application made by the president or cashier for the approval of the amended articles of association by the Comptroller; and such amended articles of association shall not be valid until the Comptroller shall give to such association a certificate under his hand and seal that the association has complied with all the provisions required to be complied with, and is authorized to have succession for the extended period named in the amended article of association.

§ **3.** That upon the receipt of the application and certificate of the association provided for in the preceding section, the Comptroller of the Currency shall cause a special examination to be made, at the expense of the association, to determine its condition; and if, after such examination or otherwise, it appears to him that said association is in a satisfactory condition, he shall grant his certificate of approval provided for in the preceding section, or if it appears that the condition of said association is not satisfactory, he shall withhold such certificate of approval.

§ **4.** That any association so extending the period of its succession shall continue to enjoy all the rights and privileges and immunities granted and shall continue to be subject to all the duties, liabilities and restrictions imposed by the Revised Statutes of the United States and other acts having reference to national banking associations, and it shall continue to be in all respects the identical association it was before the extension of its period of succession: *Provided, however,* That the jurisdiction for suits hereafter brought by or against any

association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be begun. And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed.

See Act of Aug. 13, 1888, § 4, *post.*

§ **5.** That when any national banking association has amended its articles of association as provided in this act, and the Comptroller has granted his certificate of approval, any shareholder not assenting to such amendment may give notice in writing to the directors, within thirty days from the date of the certificate of approval, of his desire to withdraw from said association, in which case he shall be entitled to receive from said banking association the value of the shares so held by him, to be ascertained by an appraisal made by a committee of three persons, one to be selected by such shareholder, one by the directors, and the third by the first two; and in case the value so fixed shall not be satisfactory to any such shareholder, he may appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding; and if said reappraisal shall exceed the value fixed by said committee, the bank shall pay the expenses of said reappraisal, and otherwise the appellant shall pay said expenses; and the value so ascertained and determined shall be deemed to be a debt due, and be forthwith paid, to said shareholder, from said bank; and the shares so surrendered and appraised shall, after due notice, be sold at public sale, within thirty days after the final appraisal provided in this section: *Provided,* That in the organization of any banking association intended to replace any existing banking association, and retaining the name thereof, the holder of stock in the expiring association shall be entitled to preference in the allotment of the shares of the new association in proportion to the number of shares held by them respectively in the expiring association.

§ **6.** That the circulating notes of any association so extending the period of its succession, which shall have been issued to it prior to such

extension shall be redeemed at the Treasury of the United States, as provided in section three of the act of June 20th, eighteen hundred and seventy-four, entitled "An act fixing the amount of United States notes, providing for redistribution of national bank currency; and for other purposes," and such notes when redeemed shall be forwarded to the Comptroller of the Currency, and destroyed, as now provided by law; and at the end of three years from the date of the extension of the corporate existence of each bank the association so extended shall deposit lawful money with the Treasurer of the United States sufficient to redeem the remainder of the circulation which was outstanding at the date of its extension, as provided in sections fifty-two hundred and twenty-two, fifty-two hundred and twenty-four, and fifty-two hundred and twenty-five of the Revised Statutes; and any gain that may arise from the failure to present such circulating notes for redemption shall inure to the benefit of the United States; and from time to time, as such notes are redeemed or lawful money deposited therefor as provided herein, new circulating notes shall be issued as provided by this act, bearing such devices, to be approved by the Secretary of the Treasury, as shall make them readily distinguishable from the circulating notes heretofore issued: *Provided, however*, That each banking association which shall obtain the benefit of this act shall reimburse to the Treasury the cost of preparing the plate or plates for such new circulating notes as shall be issued to it.

§ **7.** That national banking associations whose corporate existence has expired or shall hereafter expire, and which do not avail themselves of the provisions of this act, shall be required to comply with the provisions of sections fifty-two hundred and twenty-one and fifty-two hundred and twenty-two of the Revised Statutes in the same manner as if the shareholders had voted to go into liquidation, as provided in section fifty-two hundred and twenty of the Revised Statutes; and the provisions of section fifty-two hundred and twenty-four and fifty-two hundred and twenty-five of the Revised Statutes shall also be applicable to such associations, except as modified by this act; and the franchise of such associations is hereby extended for the sole purpose of liquidating their affairs until such affairs are finally closed.

§ **8.** That national banks now organized or hereafter organized,

having a capital of one hundred and fifty thousand dollars or less, shall not be required to keep on deposit or deposit with the Treasurer of the United States, United States bonds in excess of one-fourth of their capital stock as security for their circulating notes, but such banks shall keep on deposit or deposit with the Treasurer of the United States the amount of bonds as herein required; and such of those banks having on deposit bonds in excess of that amount are authorized to reduce their circulation by the deposit of lawful money as provided by law: *Provided,* That the amount of such circulating notes shall not in any case exceed ninety per centum of the par value of the bonds deposited as herein provided: *Provided further,* That the national banks which shall hereafter make deposits of lawful money for the retirement in full of their circulation shall, at the time of their deposit, be assessed, for the cost of transporting and redeeming their notes then outstanding, a sum equal to the average cost of the redemption of national bank-notes during the preceding year, and shall thereupon pay such assessment; and all national banks which have heretofore made or shall hereafter make deposits of lawful money for the reduction of their circulation, shall be assessed, and shall pay an assessment in the manner specified in section three of the act approved June twentieth, eighteen hundred and seventy-four, for the cost of transporting and redeeming their notes redeemed from such deposits subsequently to June thirtieth, eighteen hundred and eighty-one.

See for modification of above, section 17 of Federal Reserve Act, *post.*

§ **9.** That any national banking association desiring to withdraw its circulating notes, secured by deposit of United States bonds in the manner provided in section four of the act approved June twentieth, eighteen hundred and seventy-four, is hereby authorized for that purpose to deposit lawful money with the Treasurer of the United States and, with the consent of the Comptroller of the Currency and the approval of the Secretary of the Treasury, to withdraw a proportionate amount of bonds held as security for its circulating notes in the order of such deposits: *Provided,* That not more than nine millions of dollars of lawful money shall be so deposited during any calendar month for this purpose.

Any national banking association desiring to withdraw any of its

circulating notes, secured by the deposit of securities other than bonds of the United States, may make such withdrawal at any time in like manner and effect by the deposit of lawful money or national bank notes with the Treasurer of the United States, and upon such deposit a proportionate share of the securities so deposited may be withdrawn: *Provided,* That the deposits under this section to retire notes secured by the deposit of securities other than bonds of the United States shall not be covered into the Treasury, as required by section six of an act entitled "An act directing the purchaser of silver bullion and the issue of Treasury notes thereon, and for other purposes," approved July fourteenth, eighteen hundred and ninety, but shall be retained in the Treasury for the purpose of redeeming the notes of the bank making such deposit

(As amended May 30, 1908.)
See Act of March 14, 1900, *post;* section 5167, *ante.*

§ **10.** That upon a deposit of bonds as described by sections fifty-one hundred and fifty-nine and fifty-one hundred and sixty, except as modified by section four of an act entitled "An act fixing the amount of United States notes, providing for a redistribution of the national bank currency, and for other purposes," approved June twentieth, eighteen hundred and seventy-four, and as modified by section eight of this act, the association making the same shall be entitled to receive from the Comptroller of the Currency circulating notes of different denominations, in blank, registered and countersigned as provided by law, equal in amount to ninety per centum of the current market value not exceeding par, of the United States bonds so transferred and delivered, and at no time shall the total amount of such notes issued to any such association exceed ninety per centum of the amount at such time actually paid in of its capital stock; and the provisions of section fifty-one hundred and seventy-one and fifty-one hundred and seventy-six of the Revised Statutes are hereby repealed.

§ **11.** That the Secretary of the Treasury is hereby authorized to receive at the Treasury any bonds of the United States bearing three and a half per centum interest, and to issue in exchange therefor an equal amount of registered bonds of the United States of the denominations of fifty, one hundred, five hundred, one thousand and ten

thousand dollars, of such form as he may prescribe, bearing interest at the rate of three per centum per annum, payable quarterly at the Treasury of the United States. Such bonds shall be exempt from all taxation by or under State authority, and be payable at the pleasure of the United States: *Provided,* That the bonds herein authorized shall not be called in and paid so long as any bonds of the United States heretofore issued bearing a higher rate of interest than three per centum, and which shall be redeemable at the pleasure of the United States, shall be outstanding and uncalled. The last of the said bonds originally issued under this act, and their substitutes, shall be first called in, and this order of payment shall be followed until all shall have been paid.

§ **12.** That the Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer or assistant treasurers of the United States, in sums not less than twenty dollars, and to issue certificates therefor in denominations of not less than twenty dollars each, corresponding with the denominations of United States notes. The coin deposited for or representing the certificates of deposit shall be retained in the Treasury for the payment of the same on demand. Said certificates shall be receivable for customs, taxes and all public dues, and when so received may be reissued; and such certificates, as also silver certificates, when held by any national banking association, shall be counted as part of its lawful reserve; and no national banking association shall be a member of any clearing-house in which such certificates shall not be receivable in the settlement of clearing-house balances: *Provided,* That the Secretary of the Treasury shall suspend the issue of such gold certificates whenever the amount of gold coin and gold bullion in the Treasury reserved for the redemption of United States notes falls below one hundred millions of dollars; and the provisions of section fifty-two hundred and seven of the Revised Statutes shall be applicable to the certificates herein authorized and directed to be issued.

§ **13.** That any officer, clerk or agent of any national banking association who shall willfully violate the provisions of an act entitled "An act in reference to certifying checks by national banks," approved March third, eighteen hundred and sixty-nine, being section fifty-two hundred and eight of the Revised Statutes of the United States, or who shall resort to any device, or receive any fictitious obligation, direct or col-

lateral, in order to evade the provisions thereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the dealer upon the books of the banking association, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof in any circuit or district court of the United States, be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, in the discretion of the court.

§ **14.** That Congress may at any time amend, alter, or repeal this act and the acts of which this is amendatory.

Approved July 12, 1882.

See section 12, Act of March 14, 1900, *post*, repealing inconsistent part of foregoing.

The act of April 12, 1902, affecting section 1 of foregoing Act, extension of corporate existence, provides as follows . . . "That the Comptroller of the Currency is hereby authorized in the manner provided by, and under the conditions and limitations of the act of July 12, 1882, to extend for a further period of twenty years the charter of any national banking association extended under said act which shall desire to continue its existence after the expiration of its charter."

Act of March 3, 1883

EXTRACTS FROM

An act to reduce internal revenue taxation and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the taxes hereinafter specified imposed by the laws now in force be, and the same are hereby repealed, as hereinafter provided, namely: On capital and deposits of banks, bankers and national banking associations, except such taxes as are now due and payable; and on and after the first day of July, eighteen hundred and eighty-three, the stamp tax on bank checks, drafts, orders and vouchers.

. . . . . .

Approved March 3, 1883.

ACT OF MARCH 29, 1886

An act additional to an act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," passed June 3, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the receiver of any national bank duly appointed by the Comptroller of the Currency, and who shall have duly qualified and entered upon the discharge of his trust, shall find it in his opinion necessary, in order to fully protect and benefit his said trust, to the extent of any and all equities that such trust may have in any property, real or personal, by reason of any bond, mortgage, assignment, or other proper legal claims attaching thereto, and which said property is to be sold under any execution, decree of foreclosure, or proper order of any court of jurisdiction, he may certify the facts in the case together with his opinion as to the value of the property to be sold, and the value of the equity his said trust may have in the same, to the Comptroller of the Currency, together with a request for the right and authority to use and employ so much of the money of said trust as may be necessary to purchase such property at such sale.

By the concluding portion of section 5234 of the National Bank Act, *ante,* the receiver of a national bank was required to pay over all money collected by him to the Treasurer of the United States subject to the order of the Comptroller.

§ 2. That such request, if approved by the Comptroller of the Currency, shall be, together with the certificate of facts in the case, and his recommendation as to the amount of money which, in his judgment, should be so used and employed, submitted to the Secretary of the Treasury; and if the same shall likewise be approved by him, the request shall be by the Comptroller of the Currency allowed and notice thereof, with copies of the request, certificate of facts, and indorsements of approvals, shall be filed with the Treasurer of the United States.

§ **3.** That whenever any such request shall be allowed as hereinbefore provided, the said Comptroller of the Currency shall be, and is, empowered to draw upon and from such funds of any such trust as may be deposited with the Treasurer of the United States for the benefit of the bank in interest to the amount as may be recommended and allowed, and for the purpose for which such allowance was made: *Provided, however,* That all payments to be made for or on account of the purchase of any such property and under any such allowance shall be made by the Comptroller of the Currency direct, with the approval of the Secretary of the Treasury, for such purpose only and in such manner as he may determine and order.

Approved March 29, 1886.

Act of May 1, 1886

An act to enable national banking associations to increase their capital stock and to change their names or locations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any national banking association may, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association, increase its capital stock, in accordance with existing laws, to any sum approved by the said Comptroller, notwithstanding the limit fixed in its original articles of association and determined by said Comptroller; and no increase of the capital stock of any national banking association either within or beyond the limit fixed in its original articles of association shall be made except in the manner herein provided.

§ **2.** That any national banking association may change its name or the place where its operations of discount and deposit are to be carried on, to any other place within the same State, not more than thirty miles distant, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the office of Comptroller of the Cur-

rency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same.

§ **3.** That all debts, liabilities, rights, provisions, and powers of the association under its old name shall devolve upon and inure to the association under its new name.

§ **4.** That nothing in this act contained shall be so construed as in any manner to release any national banking association under its old name or at its old location from any liability, or affect any action or proceeding in law in which said association may be or become a party interested.

Approved May 1, 1886.

Notice should be taken of the final clause of the first section, because it deprives the board of directors of the power to increase capital, even when this power is granted in the articles of association.

As repeals by implication are not favored, and as the Act of 1886 is not in conflict or inconsistent with second and third requirements under section 5142, U. S. R. S., "that the whole amount of the proposed increase shall be paid in, and that the Comptroller, by his certificate specifying the amount of such increase of capital stock, shall approve thereof, and certify to the fact of its payment," it follows that such payment and certification by the Comptroller are still required under this act (1886) in order to make the increase of capital stock legal. Winters *v.* Armstrong, 37 Fed. Rep. 508.

ACT OF JULY 30, 1886

EXTRACT FROM

An act to prohibit the passage of local or special laws in the Territories of the United States to limit Territorial indebtedness, or for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, . . .

§ **5.** That section eighteen hundred and eighty-nine, title twenty-three of the Revised Statutes of the United States be amended to read as follows:

The legislative assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorpo-

ration acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue), loan, trust, and guarantee associations, and for the construction or operation of railroads, wagon-roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association.

Approved July 30, 1886.

Act of March 3, 1887

An act to amend sections 5191 and 5192 of Revised Statutes of United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever three-fourths in number of the national banks located in any city of the United States having a population of fifty thousand people, shall make application to the Comptroller of the Currency, in writing, asking that the name of the city in which such banks are located shall be added to the cities named in sections fifty-one hundred and ninety-one and fifty-one hundred and ninety-two of the Revised Statutes, the Comptroller shall have authority to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of its deposits, as provided in sections fifty-one hundred and ninety-one and fifty-one hundred and ninety-five of the Revised Statutes.

§ 2. That whenever three-fourths in number of the national banks located in any city of the United States having a population of two hundred thousand people shall make application to the Comptroller of the Currency, in writing, asking that such city may be a central reserve city, like the city of New York, in which one-half of the lawful money reserve of the national banks located in other reserve cities may be deposited, as provided in section fifty-one hundred and ninety-five of the Revised Statutes, the Comptroller shall have authority,

with the approval of the Secretary of the Treasury, to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, twenty-five per centum of its deposits, as provided in section fifty-one hundred and ninety-one of the Revised Statutes.

In accordance with the amendment Chicago and St. Louis have been made central reserve cities. The application should be made the same as in the case of the designation of a reserve city.

§ **3.** That section three of the act of January fourteenth, eighteen hundred and seventy-five, entitled "An act to provide for the resumption of specie payments," be, and the same is hereby, amended by adding, after the words "New York," the words "and the city of San Francisco, California."

Approved March 3, 1887.

See Act of March 3, 1903, *post.*

This amendment permits legal-tender notes presented in sums of not less than fifty dollars at the sub-treasury at San Francisco to be redeemed there in gold or silver coin. See section 12, Act of June 12, 1882, *ante.*

See Harland *v.* United Lines Tel. Co., 6 L. R. A. 252, 40 Fed. Rep. 308.

Act of August 13, 1888

An act to correct the enrolment of an act approved March 3, 1887, entitled "An act to amend sections one, two, three and ten of an act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from the State courts, and for other purposes, approved March 3, 1875"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, . . .

§ **4.** That all national banking associations, established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other

than such as they would have in cases between individual citizens of the same State.

The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank.

Approved August 13, 1888.

See proviso to section 4, Act of July 12, 1882, *ante;* First Nat. Bank *v.* Forest, 40 Fed. Rep. 705.

Extracts from Act of May 2, 1890

National Banks in Oklahoma

§ **17.** That the provisions of title sixty-two of the Revised Statutes of the United States relating to national banks, and all amendments thereto, shall have the same force and effect in the Territory of Oklahoma as elsewhere in the United States: *Provided,* That persons otherwise qualified to act as directors shall not be required to have resided in said Territory for more than three months immediately preceding their election as such.

National Banking Laws Extended to Indian Territory

§ **31.** . . . That all laws relating to national banking associations shall have the same force and effect in Indian Territory as elsewhere in the United States.

(Note.—The Act of May 2, 1890, is "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes." Sections 17 and 31 are the only sections which relate to national banks.)

Extracts from Act of July 14, 1890

Deposits to Pay Circulating Notes to Be Covered into Treasury

§ **6.** That upon the passage of this act the balances standing with the Treasurer of the United States to the respective credits of na-

tional banks for deposits made to redeem the circulating notes of such banks, and all deposits thereafter received for like purpose, shall be covered into the Treasury as a miscellaneous receipt, and the Treasurer of the United States shall redeem from the general cash in the Treasury the circulating notes of said banks which may come into his possession subject to redemption, and upon the certificate of the Comptroller of the Currency that such notes have been received by him and that they have been destroyed and that no new notes will be issued in their place, reimbursement of their amount shall be made to the Treasurer, under such regulations as the Secretary of the Treasury may prescribe, from an appropriation hereby created, to be known as national bank notes redemption account, but the provisions of this act shall not apply to the deposits received under section three of the act of June twentieth, eighteen hundred and seventy-four, requiring every national bank to keep in lawful money with the Treasurer of the United States a sum equal to five per centum of its circulation, to be held and used for the redemption of its circulating notes; and the balance remaining of the deposits so covered shall, at the close of each month, be reported on the monthly public debt statement, as debt of the United States bearing no interest.

See Act of March 14, 1900, *post.*

Act of July 28, 1892

An act to amend the National Bank Act in providing for the redemption of national bank-notes stolen from, or lost by banks of issue

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Revised Statutes of the United States, providing for the redemption of national bank-notes, shall apply to all national bank-notes that have been or may be issued to, or received by, any national bank, notwithstanding such notes may have been lost by or stolen from the bank and put in circulation without the signature or upon the forged signature of the president or vice-president and cashier.

Approved July 28, 1892.

Act of August 13, 1894

Taxation of Legal Tender Notes and National Bank Notes

§ **1.** That circulating notes of national banking associations and United States legal-tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver, or other coin shall be subject to taxation as money on hand or on deposit under the laws of any State or Territory: *Provided,* That any such taxation shall be exercised in the same manner and at the same rate that any such State or Territory shall tax money or currency circulating as money within its jurisdiction.

§ **2.** That the provisions of this act shall not be deemed or held to change existing laws in respect of the taxation of national banking associations.

Approved August 13, 1894.

(Note.—Act of June 13, 1898, was the War Revenue Act, and its repeal took effect July 1, 1902, pursuant to Act of April 12, 1902.)

Currency Act of March 14, 1900

An act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine, as established by section thirty-five hundred and eleven of the Revised Statutes of the United States shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity.

§ **2.** That United States notes, and Treasury notes issued under the Act of July fourteenth, eighteen hundred and ninety, when presented to the Treasury for redemption, shall be redeemed in gold coin

of the standard fixed in the first section of this act, and in order to secure the prompt and certain redemption of such notes as herein provided it shall be the duty of the Secretary of the Treasury to set apart in the Treasury a reserve fund of one hundred and fifty million dollars in gold coin and bullion, which fund shall be used for such redemption purposes only, and whenever and as often as any of said notes shall be redeemed from said fund it shall be the duty of the Secretary of the Treasury to use said notes so redeemed to restore and maintain such reserve fund in the manner following, to wit: First, by exchanging the notes so redeemed for any gold coin in the general fund of the Treasury; second, by accepting deposits of gold coin at the Treasury or at any subtreasury in exchange for the United States notes so redeemed; third, by procuring gold coin by the use of said notes, in accordance with the provisions of section thirty-seven hundred of the Revised Statutes of the United States. If the Secretary of the Treasury is unable to restore and maintain the gold coin in the reserve fund by the foregoing methods, and the amount of such gold coin and bullion in said fund shall at any time fall below one hundred million dollars, then it shall be his duty to restore the same to the maximum sum of one hundred and fifty million dollars by borrowing money on the credit of the United States, and for the debt thus incurred to issue and sell coupon or registered bonds of the United States, in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of not exceeding three per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after one year from the date of their issue, and to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the gold coin received from the sale of said bonds shall first be covered into the general fund of the Treasury and then exchanged, in the manner hereinbefore provided, for an equal amount of the notes redeemed and held for exchange, and the Secretary of the Treasury may, in his discretion, use said notes in exchange for gold, or to purchase or redeem any bonds of the United States, or for any other lawful purpose the public interests may require, except that they shall not be used to meet deficiencies in the current revenues. That United States notes when redeemed in

accordance with the provisions of this section shall be reissued, but shall be held in the reserve fund until exchanged for gold, as herein provided; and the gold coin and bullion in the reserve fund, together with the redeemed notes held for use as provided in this section, shall at no time exceed the maximum sum of one hundred and fifty million dollars.

§ **3.** That nothing contained in this act shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States.

§ **4.** That there be established in the Treasury Department, as a part of the office of the Treasurer of the United States, divisions to be designated and known as the division of issue and the division of redemption, to which shall be assigned, respectively, under such regulations as the Secretary of the Treasury may approve, all records and accounts relating to the issue and redemption of United States notes, gold certificates, silver certificates and currency certificates. There shall be transferred from the accounts of the general fund of the Treasury of the United States, and taken up on the books of said divisions, respectively, accounts relating to the reserve fund for the redemption of United States notes and Treasury notes, the gold coin held against outstanding gold certificates, the United States notes held against outstanding currency certificates, and the silver dollars held against outstanding silver certificates, and each of the funds represented by these accounts shall be used for the redemption of the notes and certificates for which they are respectively pledged, and shall be used for no other purpose, the same being held as trust funds.

§ **5.** That it shall be the duty of the Secretary of the Treasury, as fast as standard silver dollars are coined under the provisions of the acts of July fourteenth, eighteen hundred and ninety, and June thirteenth, eighteen hundred and ninety-eight, from bullion purchased under the act of July fourteenth, eighteen hundred and ninety, to retire and cancel an equal amount of Treasury notes whenever received into the Treasury, either by exchange in accordance with the provisions of this act or in the ordinary course of business, and upon the cancellation of Treasury notes silver certificates shall be issued against the silver dollars so coined.

§ **6.** That the Secretary of the Treasury is hereby authorized and directed to receive deposits of gold coin with the Treasurer or any assistant treasurer of the United States in sums of not less than twenty dollars, and to issue gold certificates therefor in denominations of not less than ten dollars, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose. Such certificates shall be receivable for customs, taxes, and all public dues, and when so received may be reissued, and when held by any national banking association may be counted as a part of its lawful reserve: *Provided,* That whenever and so long as the gold coin and bullion held in the reserve fund in the Treasury for the redemption of United States notes and Treasury notes shall fall and remain below one hundred million dollars the authority to issue certificates as herein provided shall be suspended: *And provided further,* That whenever and so long as the aggregate amount of United States notes and silver certificates in the general fund of the Treasury shall exceed sixty million dollars the Secretary of the Treasury may, in his discretion, suspend the issue of the certificates herein provided for: *And provided further,* That of the amount of such outstanding certificates one-fourth at least shall be in denominations of fifty dollars or less: *And provided further,* That the Secretary of the Treasury may, in his discretion, issue such certificates in denominations of ten thousand dollars, payable to order. And section fifty-one hundred and ninety-three of the Revised Statutes of the United States is hereby repealed.

(As amended by Act of March 4, 1907, *post.*)

§ **7.** That hereafter silver certificates shall be issued only of denominations of ten dollars and under, except that not exceeding in the aggregate ten per centum of the total volume of said certificates, in the discretion of the Secretary of the Treasury, may be issued in denominations of twenty dollars, fifty dollars, and one hundred dollars; and silver certificates of higher denomination than ten dollars, except as herein provided, shall, whenever received at the Treasury or redeemed, be retired and canceled, and certificates of denominations of ten dollars or less shall be substituted therefor, and after such substitution, in whole or in part, a like volume of United States notes of less denomination than ten dollars shall from time to time be retired and canceled, and notes of denominations of ten dollars and upwards shall

be reissued in substitution therefor, with like qualities and restrictions as those retired and canceled.

§ 8. That the Secretary of the Treasury is hereby authorized to use, at his discretion, any silver bullion in the Treasury of the United States purchased under the act of July fourteenth, eighteen hundred and ninety, for coinage into such denominations of subsidiary silver coin as may be necessary to meet the public requirements for such coin: *Provided*, That the amount of subsidiary silver coin outstanding shall not at any time exceed in the aggregate one hundred millions of dollars. Whenever any silver bullion purchased under the act of July fourteenth, eighteen hundred and ninety, shall be used in the coinage of subsidiary silver coin, an amount of Treasury notes issued under said act equal to the cost of the bullion contained in such coin shall be canceled and not reissued.

§ 9. That the Secretary of the Treasury is hereby authorized and directed to cause all worn and uncurrent subsidiary silver coin of the United States now in the Treasury, and hereafter received, to be recoined, and to reimburse the Treasurer of the United States for the difference between the nominal or face value of such coin and the amount the same will produce in new coin from any moneys in the Treasury not otherwise appropriated.

§ 10. That section fifty-one hundred and thirty-eight of the Revised Statutes is hereby amended so as to read as follows:

Section 5138. No association shall be organized with a less capital than one hundred thousand dollars, except that banks with a capital of not less than fifty thousand dollars may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants, and except that banks with a capital of not less than twenty-five thousand dollars may, with the sanction of the Secretary of the Treasury, be organized in any place the population of which does not exceed three thousand inhabitants. No association shall be organized in a city the population of which exceeds fifty thousand persons with a capital of less than two hundred thousand dollars.

Amendment incorporated in text of § 5138, *ante*.

§ **11.** That the Secretary of the Treasury is hereby authorized to receive at the Treasury any of the outstanding bonds of the United States bearing interest at five per centum per annum, payable February first, nineteen hundred and four, and any bonds of the United States bearing interest at four per centum per annum, payable July first, nineteen hundred and seven, and any bonds of the United States bearing interest at three per centum per annum, payable August first, nineteen hundred and eight, and to issue in exchange therefor an equal amount of coupon or registered bonds of the United States in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of two per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That such outstanding bonds may be received in exchange of a valuation not greater than their present worth to yield an income of two and one-quarter per centum per annum; and in consideration of the redemption of interest effected, the Secretary of the Treasury is authorized to pay to the holders of the outstanding bonds surrendered for exchange, out of any money in the Treasury not otherwise appropriated, a sum not greater than the difference between their present worth, computed as aforesaid, and their part value, and the payments to be made hereunder shall be held to be payments on account of the sinking fund created by section thirty-six hundred and ninety-four of the Revised Statutes: *And provided further*, That the two per centum bonds to be issued under the provisions of this act shall be issued at not less than par, and they shall be numbered consecutively in the order of their issue, and when payment is made the last numbers issued shall be first paid, and this order shall be followed until all the bonds are paid, and whenever any of the outstanding bonds are called for payment interest thereon shall cease three months after such call; and there is hereby appropriated out of any money in the Treasury not otherwise appropriated, to effect the exchanges of bonds provided for in this act, a sum not exceeding one-fifteenth of one per centum of the face value of said bonds to pay the expense of preparing and issuing the same and other expenses incident thereto.

§ **12.** That upon the deposit with the Treasurer of the United States, by any national banking association, of any bonds of the United States in the manner provided by existing law, such association shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited; and any national banking association now having bonds on deposit for the security of circulating notes, and upon which an amount of circulating notes has been issued less than the par value of the bonds, shall be entitled, upon due application to the Comptroller of the Currency, to receive additional circulating notes in blank to an amount which will increase the circulating notes held by such association to the par value of the bonds deposited, such additional notes to be held and treated in the same way as circulating notes of national banking associations heretofore issued, and subject to all the provisions of law affecting such notes: *Provided,* That nothing herein contained shall be construed to modify or repeal the provisions of section fifty-one hundred and sixty-seven of the Revised Statutes of the United States authorizing the Comptroller of the Currency to require additional deposits of bonds or of lawful money in case the market value of the bonds held to secure the circulating notes shall fall below the par value of the circulating notes outstanding for which such bonds may be deposited as security: *And provided further,* That the circulating notes furnished to national banking associations under the provisions of this act shall be of the denominations prescribed by law, except that no national banking association shall, after the passage of this act, be entitled to receive from the Comptroller of the Currency, or to issue or reissue or place in circulation, more than one-third in amount of its circulating notes of the denomination of five dollars: *And provided further,* That the total amount of such notes issued to any such association may equal at any time but shall not exceed the amount at such time of its capital stock actually paid in: *And provided further,* That under regulations to be prescribed by the Secretary of the Treasury any national banking association may substitute the two per centum bonds issued under the provisions of this act for any of the bonds deposited with the Treasurer to secure circulation or to secure deposits of public money; and so much of an act entitled "An act to enable national banking associations to extend their corporate existence, and for other purposes," approved July twelfth, eighteen

hundred and eighty-two, as prohibits any national bank which makes any deposit of lawful money in order to withdraw its circulating notes from receiving any increase of its circulation, for the period of six months from the time it made such deposit of lawful money for the purpose aforesaid, is hereby repealed, and all other acts or parts of acts inconsistent with the provisions of this section are hereby repealed.

§ **13.** That every national banking association having on deposit, as provided by law, bonds of the United States bearing interest at the rate of two per centum per annum, issued under the provisions of this act, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of one per centum each half year upon the average amount of such of its notes in circulation as are based upon the deposit of said two per centum bonds; and such taxes shall be in lieu of existing taxes on its notes in circulation imposed by section fifty-two hundred and fourteen of the Revised Statutes.

§ **14.** That the provisions of this act are not intended to preclude the accomplishment of international bimetallism whenever conditions shall make it expedient and practicable to secure the same by concurrent action of the leading commercial nations of the world and at a ratio which shall insure permanence of relative value between gold and silver.

Approved March 14, 1900.

Act of April 12, 1900

(Section 14 thereof affects national banks)

§ **14.** That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws, which, in view of the provisions of section 3, shall not have force and effect in Porto Rico.

Note.—The Attorney-General of the United States in an opinion rendered June 2, 1900, held "There seems to be in the structure of the national banking laws no general

provisions which cannot be carried into force and effect in Porto Rico equally with all of the various States and Territories to which the laws were originally applied. I can find no reason to hold that the statutes relative to the organization and powers of national banks have not, by section 14 of the Porto Rican Act, above referred to, been extended to that island. The language of that section is broad enough, and in my opinion does, authorize the organization and carrying on of national banks in Porto Rico.

Act of April 30, 1900

§ 5. That the Constitution, and except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory (Hawaii) as elsewhere in the United States: *Provided,* That sections eighteen hundred and fifty and eighteen hundred and ninety of the Revised Statutes of the United States shall not apply to the Territory of Hawaii.

Note.—The Attorney-General of the United States in an opinion rendered June 23, 1900, held "That the Act of April 30, 1900, . . . extended the national banking acts of the Territory of Hawaii, and would authorize the Comptroller to grant permission for the organization of national banks therein. [See my opinion of June 2, 1900, relative to the same question as applied to Porto Rico.] But I do not think that the provisions of section 5154 apply to banks existing in Hawaii prior to the passage of the Act of April 30, 1900. Sections 5154 and 5155 seem, by their especial terms, to refer only to banking institutions organized under special or general laws of a State, and do not seem to apply at all to banks organized under the laws of any Territory. I think the object of these two sections was to enable the banks that were previously strictly State institutions to become national corporations, and the operation of the act in that respect is to be so restricted."

Extracts from Act of March 3, 1903

Cities to Be Added to Reserve List

"That whenever three-fourths in number of the national banks located in any city of the United States, having a population of twenty-five thousand people, shall make application to the Comptroller of the Currency, in writing, asking that the name of the city in which such banks are located shall be added to the cities named in section 5191 and section 5192 of the Revised Statutes the Comptroller shall have

authority to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of its deposits, as provided in sections 5191, and 5195 of the Revised Statutes."

Extract from Act of December 21, 1905

"That the two per cent bonds of the United States authorized by section eight of the act entitled 'An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans,' approved June twenty-eight, nineteen hundred and two, shall have all the rights and privileges accorded by law to other two per cent bonds of the United States, and every national banking association having on deposit, as provided by law, such bonds issued under the provisions of said section eight of said act approved June twenty-eight, nineteen hundred and two, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of one per cent each half year upon the average amount of such of its notes in circulation as are based upon the deposit of said two per cent bonds; and such taxes shall be in lieu of existing taxes on its notes in circulation imposed by section fifty-two hundred and fourteen of the Revised Statutes."

Extract from Act of January 26, 1907

"That it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for, or any election by any State legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be subject to a fine not exceeding five thou-

sand dollars, and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall upon conviction be punished by a fine of not exceeding one thousand and not less than two hundred and fifty dollars, or by imprisonment for a term of not more than one year, or both such fine and imprisonment in the discretion of the court."

Extract from Act of March 4, 1907

§ **2.** That whenever and so long as the outstanding silver certificates of the denominations of one dollar, two dollars, and five dollars, issued under the provisions of section seven of an Act entitled "An act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes," approved March fourteenth, nineteen hundred, shall be, in the opinion of the Secretary of the Treasury, insufficient to meet the public demand therefor, he is hereby authorized to issue United States notes of the denominations of one dollar, two dollars, and five dollars, and upon the issue of United States notes of such denominations an equal amount of United States notes of higher denominations shall be retired and canceled: *Provided, however,* That the aggregate amount of United States notes at any time outstanding shall remain as at present fixed by law: *And provided further,* That nothing in this act shall be construed as affecting the right of any national bank to issue one third in amount of its circulating notes of the denomination of five dollars, as now provided by law.

AMENDMENT OF 1908 TO NATIONAL BANK ACT

[Examine section 27 of Federal Reserve Act, *post*, as to re-enactment of U. S. Rev. Stat., sections 5153, 5172, 5191 and 5214 as they read prior to May 30, 1908, and which sections had been amended by this Act of May 30, 1908.].

(Became law May 30, 1908)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ **1.** That national banking associations, each having an unimpaired capital and a surplus of not less than twenty per centum, not less than ten in number, having an aggregate capital and surplus of at least five millions of dollars, may form voluntary associations to be designated as national currency associations. The banks uniting to form such association shall, by their presidents or vice-presidents, acting under authority from the board of directors, make and file with the Secretary of the Treasury a certificate setting forth the names of the banks composing the association, the principal place of business of the association, and the name of the association, which name shall be subject to the approval of the Secretary of the Treasury. Upon the filing of such certificate the associated banks therein named shall become a body corporate, and by the name so designated and approved may sue and be sued and exercise the powers of a body corporate for the purposes hereinafter mentioned: *Provided,* That not more than one such national currency association shall be formed in any city: *Provided, further,* That the several members of such national currency association shall be taken, as nearly as conveniently may be, from a territory composed of a State or part of a State, or contiguous parts of one or more States: *And provided further,* That any national bank in such city or territory, having the qualifications herein prescribed for membership in such national currency association, shall, upon its application to and upon the approval of the Secretary of the Treasury, be admitted to membership in a national currency association for that city or territory, and upon such admission shall be deemed and held a part of the body corporate, and as such entitled to all the rights and privileges and subject to all the liabilities of an original member: *And provided further,* That

each national currency association shall be composed exclusively of banks not members of any other currency association.

The dissolution, voluntary or otherwise, of any bank in such association shall not affect the corporate existence of the association unless there shall then remain less than the minimum number of ten banks: *Provided, however,* That the reduction of the number of said banks below the minimum of ten shall not affect the existence of the corporation with respect to the assertion of all rights in favor of or against such association. The affairs of the association shall be managed by a board consisting of one representative from each bank. By-laws for the government of the association shall be made by the board, subject to the approval of the Secretary of the Treasury. A president, vice-president, secretary, treasurer, and an executive committee of not less than five members, shall be elected by the board. The powers of such board, except in the election of officers and making of by-laws, may be exercised through its executive committee.

The national currency association herein provided for shall have and exercise any and all powers necessary to carry out the purposes of this section, namely, to render available, under the direction and control of the Secretary of the Treasury, as a basis for additional circulation any securities, including commercial paper, held by a national banking association. For the purpose of obtaining such additional circulation, any bank belonging to any national currency association, having circulating notes outstanding secured by the deposit of bonds of the United States to an amount not less than forty per centum of its capital stock, and which has its capital unimpaired and a surplus of not less than twenty per centum, may deposit with and transfer to the association, in trust for the United States, for the purpose hereinafter provided, such of the securities above mentioned as may be satisfactory to the board of the association. The officers of the association may thereupon, in behalf of such bank, make application to the Comptroller of the Currency for an issue of additional circulating notes to an amount not exceeding seventy-five per centum of the cash value of the securities or commercial paper so deposited. The Comptroller of the Currency shall immediately transmit such application to the Secretary of the Treasury with such recommendation as he thinks proper, and, if, in the judgment of the Secretary of the Treasury, business conditions in the locality demand additional circulation, and if he be satisfied with

the character and value of the securities proposed and that a lien in favor of the United States on the securities so deposited and on the assets of the banks composing the association will be amply sufficient for the protection of the United States, he may direct an issue of additional circulating notes to the association, on behalf of such bank, to an amount in his discretion, not, however, exceeding seventy-five per centum of the cash value of the securities so deposited: *Provided*, That upon the deposit of any of the State, city, town, county, or other municipal bonds, of a character described in section three of this Act, circulating notes may be issued to the extent of not exceeding ninety per centum of the market value of such bonds so deposited: *And provided further*, That no national banking association shall be authorized in any event to issue circulating notes based on commercial paper in excess of thirty per centum of its unimpaired capital and surplus. The term "commercial paper" shall be held to include only notes representing actual commercial transactions, which when accepted by the association shall bear the names of at least two responsible parties and have not exceeding four months to run.

The banks and the assets of all banks belonging to the association shall be jointly and severally liable to the United States for the redemption of such additional circulation; and to secure such liability the lien created by section fifty-two hundred and thirty of the Revised Statutes shall extend to and cover the assets of all banks belonging to the association, and to the securities deposited by the banks with the association pursuant to the provisions of this act; but as between the several banks composing such association each bank shall be liable only in the proportion that its capital and surplus bears to the aggregate capital and surplus of all such banks. The association may, at any time, require of any of its constituent banks a deposit of additional securities or commercial paper, or an exchange of the securities already on deposit, to secure such additional circulation; and in case of the failure of such bank to make such deposit or exchange the association may, after ten days' notice to the bank, sell the securities and paper already in its hands at public sale, and deposit the proceeds with the Treasurer of the United States as a fund for the redemption of such additional circulation. If such fund be insufficient for that purpose the association may recover from the bank the amount of the deficiency by suit in the circuit court of the United States, and shall have the benefit of the lien hereinbefore

provided for in favor of the United States upon the assets of such bank. The association or the Secretary of the Treasury may permit or require the withdrawal of any such securities or commercial paper and the substitution of other securities or commercial paper of equal value therefor.

§ **2.** That whenever any bank belonging to a national currency association shall fail to preserve or make good its redemption fund in the Treasury of the United States, required by section three of the Act of June twentieth, eighteen hundred and seventy-four, chapter three hundred and forty-three, and the provisions of this act, the Treasurer of the United States shall notify such national currency association to make good such redemption fund, and upon the failure of such national currency association to make good such fund, the Treasurer of the United States may, in his discretion, apply so much of the redemption fund belonging to the other banks composing such national currency association as may be necessary for that purpose; and such national currency association may, after five days' notice to such bank, proceed to sell at public sale the securities deposited by such bank with the association pursuant to the provisions of section one of this act, and deposit the proceeds with the Treasurer of the United States as a fund for the redemption of the additional circulation taken out by such bank under this act.

§ **3.** That any national banking association which has circulating notes outstanding, secured by the deposit of United States bonds to an amount of not less than forty per centum of its capital stock, and which has a surplus of not less than twenty per centum, may make application to the Comptroller of the Currency for authority to issue additional circulating notes to be secured by the deposit of bonds other than bonds of the United States. The Comptroller of the Currency shall transmit immediately the application, with his recommendation, to the Secretary of the Treasury, who shall, if in his judgment business conditions in the locality demand additional circulation, approve the same, and shall determine the time of issue and fix the amount, within the limitations herein imposed, of the additional circulating notes to be issued. Whenever after receiving notice of such approval any such association shall deposit with the Treasurer or any assistant treasurer of

the United States such of the bonds described in this section as shall be approved in character and amount by the Treasurer of the United States and the Secretary of the Treasury, it shall be entitled to receive, upon the order of the Comptroller of the Currency, circulating notes in blank, registered and countersigned as provided by law, not exceeding in amount ninety per centum of the market value, but not in excess of the par value of any bonds so deposited, such market value to be ascertained and determined under the direction of the Secretary of the Treasury.

The Treasurer of the United States, with the approval of the Secretary of the Treasury, shall accept as security for the additional circulating notes provided for in this section, bonds or other interest-bearing obligations of any State of the United States, or any legally authorized bonds issued by any city, town, county, or other legally constituted municipality or district in the United States which has been in existence for a period of ten years, and which for a period of ten years previous to such deposit has not defaulted in the payment of any part of either principal or interest of any funded debt authorized to be contracted by it, and whose net funded indebtedness does not exceed ten per centum of the valuation of its taxable property, to be ascertained by the last preceding valuation of property for the assessment of taxes. The Treasurer of the United States, with the approval of the Secretary of the Treasury, shall accept, for the purposes of this section, securities herein enumerated in such proportions as he may from time to time determine, and he may with such approval at any time require the deposit of additional securities, or require any association to change the character of the securities already on deposit.

§ **4.** That the legal title of all bonds, whether coupon or registered, deposited to secure circulating notes issued in accordance with the terms of section three of this act shall be transferred to the Treasurer of the United States in trust for the association depositing them, under regulations to be prescribed by the Secretary of the Treasury. A receipt shall be given to the association by the Treasurer or any assistant treasurer of the United States, stating that such bond is held in trust for the association on whose behalf the transfer is made, and as security for the redemption and payment of any circulating notes that have been or may be delivered to such association. No assignment or transfer of any such bond by the Treasurer shall be

deemed valid unless countersigned by the Comptroller of the Currency. The provisions of sections fifty-one hundred and sixty-three, fifty-one hundred and sixty-four, fifty-one hundred and sixty-five, fifty-one hundred and sixty-six, and fifty-one hundred and sixty-seven and sections fifty-two hundred and twenty-four to fifty-two hundred and thirty-four, inclusive, of the Revised Statutes respecting United States bonds deposited to secure circulating notes shall, except as herein modified, be applicable to all bonds deposited under the terms of section three of this act.

§ 5. That the additional circulating notes issued under this act shall be used, held, and treated in the same way as circulating notes of national banking associations heretofore issued and secured by a deposit of United States bonds, and shall be subject to all the provisions of law affecting such notes except as herein expressly modified: *Provided,* That the total amount of circulating notes outstanding of any national banking association, including notes secured by United States bonds as now provided by law, and notes secured otherwise than by deposit of such bonds, shall not at any time exceed the amount of its unimpaired capital and surplus: *And provided further,* That there shall not be outstanding at any time circulating notes issued under the provisions of this Act to an amount of more than five hundred millions of dollars.

§ 6. That whenever and so long as a national banking association has outstanding any of the additional circulating notes authorized to be issued by the provisions of this act it shall keep on deposit in the Treasury of the United States, in addition to the redemption fund required by section three of the Act of June twentieth, eighteen hundred and seventy-four, an additional sum equal to five per centum of such additional circulation at any time outstanding, such additional five per centum to be treated, held, and used in all respects in the same manner as the original redemption fund provided for by said section three of the Act of June twentieth, eighteen hundred and seventy-four.

§ 7. In order that the distribution of notes to be issued under the provisions of this act shall be made as equitable as practicable be-

tween the various sections of the country, the Secretary of the Treasury shall not approve applications from associations in any State in excess of the amount to which such State would be entitled of the additional notes herein authorized on the basis of the proportion which the unimpaired capital and surplus of the national banking associations in such State bears to the total amount of unimpaired capital and surplus of the national banking associations of the United States: *Provided, however,* That in case the applications from associations in any State shall not be equal to the amount which the associations of such State would be entitled to under this method of distribution, the Secretary of the Treasury may, in his discretion, to meet an emergency, assign the amount not thus applied for to any applying association or associations in States in the same section of the country.

§ **8.** That it shall be the duty of the Secretary of the Treasury to obtain information with reference to the value and character of the securities authorized to be accepted under the provisions of this act, and he shall from time to time furnish information to national banking associations as to such securities as would be acceptable under the provisions of this act.

§ **9.** That section fifty-two hundred and fourteen of the Revised Statutes, as amended, be further amended to read as follows: (See text of section 5214, *ante.*)

Above section 9 modified by section 27 of the Federal Reserve Act, *post.*

§ **10.** (Amending section 9 of Act of July 12, 1882, as amended by Act of March 4, 1907. Amendment incorporated in text of section 9, *ante.*)

§ **11.** (Amending section 5172. The amendment made by section 27 of Federal Reserve Act is incorporated in text of section 5172, *ante.*)

§ **12.** That circulating notes of national banking associations, when presented to the Treasury for redemption, as provided in section three of the act approved June twentieth, eighteen hundred and seventy-four, shall be redeemed in lawful money of the United States.

§ **13.** That all acts and orders of the Comptroller of the Currency and the Treasurer of the United States authorized by this act shall

have the approval of the Secretary of the Treasury, who shall have power also, to make any such rules and regulations and exercise such control over the organization and management of national currency associations as may be necessary to carry out the purposes of this act.

§ **14.** That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, with reference to the reserves of national banking associations, shall not apply to deposits of public moneys by the United States in designated depositaries.

This section 14 modified by section 27 of Federal Reserve Act, *post.*

§ **15.** That all national banking associations designated as regular depositaries of public money shall pay upon all special and additional deposits made by the Secretary of the Treasury in such depositaries, and all such associations designated as temporary depositaries of public money shall pay upon all sums of public money deposited in such associations interest at such rate as the Secretary of the Treasury may prescribe, not less, however, than one per centum per annum upon the average monthly interest at such rate as the Secretary of the Treasury may prescribe, not less, however, than one per centum per annum upon the average monthly amount of such deposits: *Provided, however,* That nothing contained in this act shall be construed to change or modify the obligation of any association or any of its officers for the safe-keeping of public money: *Provided further,* That the rate of interest charged upon such deposits shall be equal and uniform throughout the United States.

This section 15 affected section 5153 of U. S. Rev. Stat., *ante,* as to depositaries; see section 27 of Federal Reserve Act, *post,* as to modification of above section 15.

§ **16.** That a sum sufficient to carry out the purposes of the preceding sections of this act is hereby appropriated out of any money in the Treasury not otherwise appropriated.

§ **17.** That a Commission is hereby created, to be called the "National Monetary Commission," to be composed of nine members of the Senate, to be appointed by the Presiding Officer thereof, and nine members of the House of Representatives, to be appointed by the Speaker thereof; and any vacancy on the Commission shall be filled in the same manner as the original appointment.

§ **18.** That it shall be the duty of this Commission to inquire into and report to Congress at the earliest date practicable, what changes are necessary or desirable in the monetary system of the United States or in the laws relating to banking and currency, and for this purpose they are authorized to sit during the sessions or recess of Congress, at such times and places as they may deem desirable, to send for persons and papers, to administer oaths, to summons and compel the attendance of witnesses, and to employ a disbursing officer and such secretaries, experts, stenographers, messengers, and other assistants as shall be necessary to carry out the purposes for which said Commission was created. The Commission shall have the power, through subcommittee or otherwise, to examine witnesses and to make such investigations and examinations, in this or other countries, of the subjects committed to their charge as they shall deem necessary.

§ **19.** That a sum sufficient to carry out the purposes of sections seventeen and eighteen of this act, and to pay the necessary expenses of the Commission and its members, is hereby appropriated, out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available and shall be paid on the audit and order of the chairman or acting chairman of said Commission, which audit and order shall be conclusive and binding upon all Departments as to the correctness of the accounts of such Commission.

See section 16, Federal Reserve Act, *post.*

§ **20.** That this act shall expire by limitation on the thirtieth day of June, nineteen hundred and fourteen.

Approved May 30, 1908.

Extended to June 30, 1915, by section 27 of Federal Reserve Act, *post.*

Act of March 2, 1911

Certified checks drawn on national and state banks receivable for duties on imports and internal taxes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for col-

lectors of customs and of internal revenue to receive for duties on imports and internal taxes certified checks drawn on national and State banks, and trust companies during such time and under such regulations as the Secretary of the Treasury may prescribe. No person, however, who may be indebted to the United States on account of duties on imports or internal taxes who shall have tendered a certified check or checks as provisional payment for such duties or taxes, in accordance with the terms of this act, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid; and if any such check so received is not duly paid by the bank on which it is drawn and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

§ **2.** That this act shall be effective on and after June first, nineteen hundred and eleven.

Approved March 2, 1911.

FEDERAL RESERVE ACT

An act to provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes

(Approved December 23, 1913.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this act shall be the "Federal Reserve Act."

Wherever the word "bank" is used in this act, the word shall be held to include State bank, banking association, and trust company,

except where national banks or Federal reserve banks are specifically referred to.

The terms "national bank" and "national banking association" used in this act shall be held to be synonymous and interchangeable. The term "member bank" shall be held to mean any national bank, State bank, or bank or trust company which has become a member of one of the reserve banks created by this act. The term "board" shall be held to mean Federal Reserve Board; the term "district" shall be held to mean Federal reserve district; the term "reserve bank" shall be held to mean Federal reserve bank.

FEDERAL RESERVE DISTRICTS

§ **2.*** As soon as practicable, the Secretary of the Treasury, the Secretary of Agriculture and the Comptroller of the Currency, acting as "The Reserve Bank Organization Committee," shall designate not less than eight nor more than twelve cities to be known as Federal reserve cities, and shall divide the continental United States, excluding Alaska, into districts, each district to contain only one of such Federal reserve cities. The determination of said organization committee shall not be subject to review except by the Federal Reserve Board when organized: *Provided,* That the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily be coterminous with any State or States. The districts thus created may be readjusted and new districts may from time to time be created by the Federal Reserve Board, not to exceed twelve in all. Such districts shall be known as Federal reserve districts and may be designated by number. A majority of the organization committee shall constitute a quorum with authority to act.

Said organization committee shall be authorized to employ counsel and expert aid, to take testimony, to send for persons and papers, to administer oaths, and to make such investigation as may be deemed necessary by the said committee in determining the reserve districts and in designating the cities within such districts where such Federal reserve banks shall be severally located. The said committee shall supervise the organization in each of the cities designated of a Federal reserve bank, which shall include in its title the name of the city in which it is situated, as "Federal Reserve Bank of Chicago."

* "2", So in original: no prior number.

Under regulations to be prescribed by the organization committee, every national banking association in the United States is hereby required, and every eligible bank in the United States and every trust company within the District of Columbia, is hereby authorized to signify in writing, within sixty days after the passage of this act, its acceptance of the terms and provisions hereof. When the organization committee shall have designated the cities in which Federal reserve banks are to be organized, and fixed the geographical limits of the Federal reserve districts, every national banking association within that district shall be required within thirty days after notice from the organization committee, to subscribe to the capital stock of such Federal reserve bank in a sum equal to six per centum of the paid-up capital stock and surplus of such bank, one-sixth of the subscription to be payable on call of the organization committee or of the Federal Reserve Board, one-sixth within three months and one-sixth within six months thereafter, and the remainder of the subscription, or any part thereof, shall be subject to call when deemed necessary by the Federal Reserve Board, said payments to be in gold or gold certificates.

The shareholders of every Federal reserve bank shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of their subscriptions to such stock at the par value thereof in addition to the amount subscribed, whether such subscriptions have been paid up in whole or in part, under the provisions of this act.

Any national bank failing to signify its acceptance of the terms of this act within the sixty days aforesaid, shall cease to act as a reserve agent, upon thirty days' notice, to be given within the discretion of the said organization committee or of the Federal Reserve Board.

Should any national banking association in the United States now organized fail within one year after the passage of this act to become a member bank or fail to comply with any of the provisions of this act applicable thereto, all of the rights, privileges, and franchises of such association granted to it under the national bank act, or under the provisions of this act, shall be thereby forfeited. Any noncompliance with or violation of this act shall, however, be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory

in which such bank is located, under direction of the Federal Reserve Board, by the Comptroller of the Currency in his own name before the association shall be declared dissolved. In cases of such noncompliance or violation, other than the failure to become a member bank under the provisions of this act, every director who participated in or assented to the same shall be held liable in his personal or individual capacity for all damages which said bank, its shareholders, or any other person shall have sustained in consequence of such violation.

Such dissolution shall not take away or impair any remedy against such corporation, its stockholders or officers, for any liability or penalty which shall have been previously incurred.

Should the subscriptions by banks to the stock of said Federal reserve banks or any one or more of them be, in the judgment of the organization committee, insufficient to provide the amount of capital required therefor, then and in that event the said organization committee may, under conditions and regulations to be prescribed by it, offer to public subscription at par such an amount of stock in said Federal reserve banks, or any one or more of them, as said committee shall determine, subject to the same conditions as to payment and stock liability as provided for member banks.

No individual, copartnership, or corporation other than a member bank of its district shall be permitted to subscribe for or to hold at any time more than $25,000 par value of stock in any Federal reserve bank. Such stock shall be known as public stock and may be transferred on the books of the Federal reserve bank by the chairman of the board of directors of such bank.

Should the total subscriptions by banks and the public to the stock of said Federal reserve banks, or any one or more of them, be, in the judgment of the organization committee, insufficient to provide the amount of capital required therefor, then and in that event the said organization committee shall allot to the United States such an amount of said stock as said committee shall determine. Said United States stock shall be paid for at par out of any money in the Treasury not otherwise appropriated, and shall be held by the Secretary of the Treasury and disposed of for the benefit of the United States in such manner, at such times, and at such price, not less than par, as the Secretary of the Treasury shall determine.

Stock not held by member banks shall not be entitled to voting power.

The Federal Reserve Board is hereby empowered to adopt and promulgate rules and regulations governing the transfers of said stock.

No Federal reserve bank shall commence business with a subscribed capital less than $4,000,000. The organization of reserve districts and Federal reserve cities shall not be construed as changing the present status of reserve cities and central reserve cities, except in so far as this act changes the amount of reserves that may be carried with approved reserve agents located therein. The organization committee shall have power to appoint such assistants and incur such expenses in carrying out the provisions of this act as it shall deem necessary, and such expenses shall be payable by the Treasurer of the United States upon voucher approved by the Secretary of the Treasury, and the sum of $100,000, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, for the payment of such expenses.

BRANCH OFFICES

§ **3.** Each Federal reserve bank shall establish branch banks within the Federal reserve district in which it is located and may do so in the district of any Federal reserve bank which may have been suspended. Such branches shall be operated by a board of directors under rules and regulations approved by the Federal Reserve Board. Directors of branch banks shall possess the same qualifications as directors of the Federal reserve banks. Four of said directors shall be selected by the reserve bank and three by the Federal Reserve Board, and they shall hold office during the pleasure, respectively, of the parent bank and the Federal Reserve Board. The reserve bank shall designate one of the directors as manager.

§ **4.** When the organization committee shall have established Federal reserve districts as provided in section two of this act, a certificate shall be filed with the Comptroller of the Currency showing the geographical limits of such districts and the Federal reserve city designated in each of such districts. The Comptroller of the Currency shall thereupon cause to be forwarded to each national bank located in each district, and to such other banks declared to be eligible by the organization committee which may apply therefor, an application blank in form to be approved

by the organization committee, which blank shall contain a resolution to be adopted by the board of directors of each bank executing such application, authorizing a subscription to the capital stock of the Federal reserve bank organizing in that district in accordance with the provisions of this act.

When the minimum amount of capital stock prescribed by this act for the organization of any Federal reserve bank shall have been subscribed and allotted, the organization committee shall designate any five banks of those whose applications have been received, to execute a certificate of organization, and thereupon the banks so designated shall, under their seals, make an organization certificate which shall specifically state the name of such Federal reserve bank, the territorial extent of the district over which the operations of such Federal reserve bank are to be carried on, the city and State in which said bank is to be located, the amount of capital stock and the number of shares into which the same is divided, the name and place of doing business of each bank executing such certificate, and of all banks which have subscribed to the capital stock of such Federal reserve bank and the number of shares subscribed by each, and the fact that the certificate is made to enable those banks executing same, and all banks which have subscribed or may thereafter subscribe to the capital stock of such Federal reserve bank, to avail themselves of the advantages of this act.

The said organization certificate shall be acknowledged before a judge of some court of record or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall file, record and carefully preserve the same in his office.

Upon the filing of such certificate with the Comptroller of the Currency as aforesaid, the said Federal reserve bank shall become a body corporate and as such, and in the name designated in such organization certificate, shall have power—

First. To adopt and use a corporate seal.

Second. To have succession for a period of twenty years from its organization unless it is sooner dissolved by an Act of Congress, or unless its franchise becomes forfeited by some violation of law.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law or equity.

Fifth. To appoint by its board of directors, such officers and employees as are not otherwise provided for in this act, to define their duties, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees.

Sixth. To prescribe by its board of directors, by-laws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its board of directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this act and such incidental powers as shall be necessary to carry on the business of banking within the limitations prescribed by this act.

Eighth. Upon deposit with the Treasurer of the United States of any bonds of the United States in the manner provided by existing law relating to national banks, to receive from the Comptroller of the Currency circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited, such notes to be issued under the same conditions and provisions of law as relate to the issue of circulating notes of national banks secured by bonds of the United States bearing the circulating privilege, except that the issue of such notes shall not be limited to the capital stock of such Federal reserve bank.

But no Federal reserve bank shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized by the Comptroller of the Currency to commence business under the provisions of this act.

Every Federal reserve bank shall be conducted under the supervision and control of a board of directors.

The board of directors shall perform the duties usually appertaining to the office of directors of banking associations and all such duties as are prescribed by law.

Said board shall administer the affairs of said bank fairly and impartially and without discrimination in favor of or against any member bank or banks and shall, subject to the provisions of law and the orders of the Federal Reserve Board, extend to each member bank such discounts, advancements and accommodations as may be safely and reasonably made with due regard for the claims and demands of other member banks.

Such board of directors shall be selected as hereinafter specified and shall consist of nine members, holding office for three years, and divided into three classes, designated as classes A, B, and C.

Class A shall consist of three members, who shall be chosen by and be representative of the stock-holding banks.

Class B shall consist of three members, who at the time of their election shall be actively engaged in their district in commerce, agriculture, or some other industrial pursuit.

Class C shall consist of three members who shall be designated by the Federal Reserve Board. When the necessary subscriptions to the capital stock have been obtained for the organization of any Federal reserve bank, the Federal Reserve Board shall appoint the class C directors and shall designate one of such directors as chairman of the board to be selected. Pending the designation of such chairman, the organization committee shall exercise the powers and duties appertaining to the office of chairman in the organization of such Federal reserve bank.

No Senator or Representative in Congress shall be a member of the Federal Reserve Board or an officer or a director of a Federal reserve bank.

No director of class B shall be an officer, director, or employee of any bank.

No director of class C shall be an officer, director, employee, or stockholder of any bank.

Directors of class A and class B shall be chosen in the following manner:

The chairman of the board of directors of the Federal reserve bank of the district in which the bank is situated or, pending the appointment of such chairman, the organization committee shall classify the member banks of the district into three general groups or divisions. Each group shall contain as nearly as may be one-third of the aggregate number of the member banks of the district and shall consist, as nearly as may be, of banks of similar capitalization. The groups shall be designated by number by the chairman.

At a regularly called meeting of the board of directors of each member bank in the district it shall elect by ballot a district reserve elector and shall certify his name to the chairman of the board of directors of the Federal reserve bank of the district. The chairman shall make

lists of the district reserve electors thus named by banks in each of the aforesaid three groups and shall transmit one list to each elector in each group.

Each member bank shall be permitted to nominate to the chairman one candidate for director of class A and one candidate for director of class B. The candidates so nominated shall be listed by the chairman, indicating by whom nominated, and a copy of said list shall, within fifteen days after its completion, be furnished by the chairman to each elector.

Every elector shall, with fifteen days after the receipt of the said list, certify to the chairman his first, second, and other choices of a director of class A and class B, respectively, upon a preferential ballot, on a form furnished by the chairman of the board of directors of the Federal reserve bank of the district. Each elector shall make a cross opposite the name of the first, second, and other choices for a director of class A and for a director of class B, but shall not vote more than one choice for any one candidate.

Any candidate having a majority of all votes cast in the column of first choice shall be declared elected. If no candidate have a majority of all the votes in the first column, then there shall be added together the votes cast by the electors for such candidates in the second column and the votes cast for the several candidates in the first column. If any candidate then have a majority of the electors voting, by adding together the first and second choices, he shall be declared elected. If no candidate have a majority of electors voting when the first and second choices shall have been added, then the votes cast in the third column for other choices shall be added together in like manner, and the candidate then having the highest number of votes shall be declared elected. An immediate report of election shall be declared.

Class C directors shall be appointed by the Federal Reserve Board. They shall have been for at least two years residents of the district for which they are appointed, one of whom shall be designated by said board as chairman of the board of directors of the Federal reserve bank and as "Federal reserve agent." He shall be a person of tested banking experience; and in addition to his duties as chairman of the board of directors of the Federal reserve bank he shall be required to maintain under regulations to be established by the Federal Reserve Board a local office of said board on the premises of the Federal reserve

bank. He shall make regular reports to the Federal Reserve Board, and shall act as its official representative for the performance of the functions conferred upon it by this act. He shall receive an annual compensation to be fixed by the Federal Reserve Board and paid monthly by the Federal reserve bank to which he is designated. One of the directors of class C, who shall be a person of tested banking experience, shall be appointed by the Federal Reserve Board as deputy chairman and deputy Federal reserve agent to exercise the powers of the chairman of the board and Federal reserve agent in case of absence or disability of his principal.

Directors of Federal reserve banks shall receive, in addition to any compensation otherwise provided, a reasonable allowance for necessary expenses in attending meetings of their respective boards, which amount shall be paid by the respective Federal reserve banks. Any compensation that may be provided by boards of directors of Federal reserve banks for directors, officers or employees shall be subject to the approval of the Federal Reserve Board.

The Reserve Bank Organization Committee may, in organizing Federal reserve banks, call such meetings of bank directors in the several districts as may be necessary to carry out the purposes of this act, and may exercise the functions herein conferred upon the chairman of the board of directors of each Federal reserve bank pending the complete organization of such bank.

At the first meeting of the full board of directors of each Federal reserve bank, it shall be the duty of the directors of classes A, B and C, respectively, to designate one of the members of each class whose term of office shall expire in one year from the first of January nearest to date of such meeting, one whose term of office shall expire at the end of two years from said date, and one whose term of office shall expire at the end of three years from said date. Thereafter every director of a Federal reserve bank chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the several classes of directors of Federal reserve banks may be filled in the manner provided for the original selection of such directors, such appointees to hold office for the unexpired terms of their predecessors.

STOCK ISSUES; INCREASE AND DECREASE OF CAPITAL

§ 5. The capital stock of each Federal reserve bank shall be divided into shares of $100 each. The outstanding capital stock shall be increased from time to time as member banks increase their capital stock and surplus or as additional banks become members, and may be decreased as member banks reduce their capital stock or surplus or cease to be members. Shares of the capital stock of Federal reserve banks owned by member banks shall not be transferred or hypothecated. When a member bank increases its capital stock or surplus, it shall thereupon subscribe for an additional amount of capital stock of the Federal reserve bank of its district equal to six per centum of the said increase, one-half of said subscription to be paid in the manner hereinbefore provided for original subscription, and one-half subject to call of the Federal Reserve Board. A bank applying for stock in a Federal reserve bank at any time after the organization thereof must subscribe for an amount of the capital stock of the Federal reserve bank equal to six per centum of the paid-up capital stock and surplus of said applicant bank, paying therefor its par value plus one-half of one per centum a month from the period of the last dividend. When the capital stock of any Federal reserve bank shall have been increased either on account of the increase of capital stock of member banks or on account of the increase in the number of member banks, the board of directors shall cause to be executed a certificate to the Comptroller of the Currency showing the increase in capital stock, the amount paid in, and by whom paid. When a member bank reduces its capital stock it shall surrender a proportionate amount of its holdings in the capital of said Federal reserve bank, and when a member bank voluntarily liquidates it shall surrender all of its holdings of the capital stock of said Federal reserve bank and be released from its stock subscription not previously called. In either case the shares surrendered shall be canceled and the member bank shall receive in payment therefor, under regulations to be prescribed by the Federal Reserve Board, a sum equal to its cash-paid subscriptions on the shares surrendered and one-half of one per centum a month from the period of the last dividend, not to exceed the book value thereof, less any liability of such member bank to the Federal reserve bank.

§ 6. If any member bank shall be declared insolvent and a receiver

appointed therefor, the stock held by it in said Federal reserve bank shall be canceled, without impairment of its liability, and all cash-paid subscriptions on said stock, with one-half of one per centum per month from the period of last dividend, not to exceed the book value thereof, shall be first applied to all debts of the insolvent member bank to the Federal reserve bank, and the balance, if any, shall be paid to the receiver of the insolvent bank. Whenever the capital stock of a Federal reserve bank is reduced, either on account of a reduction in capital stock of any member bank or of the liquidation or insolvency of such bank, the board of directors shall cause to be executed a certificate to the Comptroller of the Currency showing such reduction of capital stock and the amount repaid to such bank.

DIVISION OF EARNINGS

§ **7.** After all necessary expenses of a Federal reserve bank have been paid or provided for, the stockholders shall be entitled to receive an annual dividend of six per centum on the paid-in capital stock, which dividend shall be cumulative. After the aforesaid dividend claims have been fully met, all the net earnings shall be paid to the United States as a franchise tax, except that one-half of such net earnings shall be paid into a surplus fund until it shall amount to forty per centum of the paid-in capital stock of such bank.

The net earnings derived by the United States from Federal reserve banks shall, in the discretion of the Secretary, be used to supplement the gold reserve held against outstanding United States notes, or shall be applied to the reduction of the outstanding bonded indebtedness of the United States under regulations to be prescribed by the Secretary of the Treasury. Should a Federal reserve bank be dissolved or go into liquidation, any surplus remaining, after the payment of all debts, dividend requirements as hereinbefore provided, and the par value of the stock, shall be paid to and become the property of the United States and shall be similarly applied.

Federal reserve banks, including the capital stock and surplus therein, and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate.

§ **8.** Section fifty-one hundred and fifty-four, United States Revised Statutes, is hereby amended to read as follows:

Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with any name approved by the Comptroller of the Currency:

Provided, however, That said conversion shall not be in contravention of the State law. In such case the articles of association and organization certificate may be executed by a majority of the directors of the bank or banking institution, and the certificate shall declare that the owners of fifty-one per centum of the capital stock have authorized the directors to make such certificate and to change or convert the bank or banking institution into a national association. A majority of the directors, after executing the articles of association and the organization certificate, shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a national association. The shares of any such bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the association until others are elected or appointed in accordance with the provisions of the statutes of the United States. When the Comptroller has given to such bank or banking association a certificate that the provisions of this act have been complied with, such bank or banking association, and all its stockholders, officers, and employees, shall have the same powers and privileges, and shall be subject to the same duties, liabilities, and regulations, in all respects, as shall have been prescribed by the Federal Reserve Act and by the national banking act for associations originally organized as national banking associations.

STATE BANKS AS MEMBERS

§ **9.** Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, may make application to the reserve bank organization committee, pending organization, and thereafter to the Federal Reserve Board for the right to

subscribe to the stock of the Federal reserve bank organized or to be organized within the Federal reserve district where the applicant is located. The organization committee or the Federal Reserve Board, under such rules and regulations as it may prescribe, subject to the provisions of this section, may permit the applying bank to become a stockholder in the Federal reserve bank of the district in which the applying bank is located. Whenever the organization committee or the Federal Reserve Board shall permit the applying bank to become a stockholder in the Federal reserve bank of the district, stock shall be issued and paid for under the rules and regulations in this act provided for national banks which become stockholders in Federal reserve banks.

The organization committee or the Federal Reserve Board shall establish by-laws for the general government of its conduct in acting upon applications made by the State banks and banking associations and trust companies for stock ownership in Federal reserve banks. Such by-laws shall require applying banks not organized under Federal law to comply with the reserve and capital requirements and to submit to the examination and regulations prescribed by the organization committee or by the Federal Reserve Board. No applying bank shall be admitted to membership in a Federal reserve bank unless it possesses a paid-up unimpaired capital sufficient to entitle it to become a national banking association in the place where it is situated, under the provisions of the national banking act.

Any bank becoming a member of a Federal reserve bank under the provisions of this section shall, in addition to the regulations and restrictions hereinbefore provided, be required to conform to the provisions of law imposed on the national banks respecting the limitation of liability which may be incurred by any person, firm, or corporation to such banks, the prohibition against making purchase of or loans on stock of such banks, and the withdrawal or impairment of capital, or the payment of unearned dividends; and to such rules and regulations as the Federal Reserve Board may, in pursuance thereof, prescribe.

Such banks, and the officers, agents, and employees thereof, shall also be subject to the provisions of and to the penalties prescribed by sections fifty-one hundred and ninety-eight, fifty-two hundred, fifty-two hundred and one, and *fifty-two hundred and eight, and fifty-two hundred and nine of the Revised Statutes. The member banks shall

* So in original.

also be required to make reports of the conditions and of the payments of dividends to the comptroller, as provided in sections fifty-two hundred and eleven and fifty-two hundred and twelve of the Revised Statutes, and shall be subject to the penalties prescribed by section fifty-two hundred and thirteen for the failure to make such report.

If at any time it shall appear to the Federal Reserve Board that a member bank has failed to comply with the provisions of this section or the regulations of the Federal Reserve Board, it shall be within the power of the said board, after hearing, to require such bank to surrender its stock in the Federal reserve bank; upon such surrender the Federal reserve bank shall pay the cash-paid subscriptions to the said stock with interest at the rate of one-half of one per centum per month, computed from the last dividend, if earned, not to exceed the book value thereof, less any liability to said Federal reserve bank, except the subscription liability not previously called, which shall be canceled, and said Federal reserve bank shall, upon notice from the Federal Reserve Board, be required to suspend said bank from further privileges of membership, and shall within thirty days of such notice cancel and retire its stock and make payment therefor in the manner herein provided. The Federal Reserve Board may restore membership upon due proof of compliance with the conditions imposed by this section.

FEDERAL RESERVE BOARD

§ **10.** A Federal Reserve Board is hereby created which shall consist of seven members, including the Secretary of the Treasury and the Comptroller of the Currency, who shall be members ex officio, and five members appointed by the President of the United States, by and with the advice and consent of the Senate. In selecting the five appointive members of the Federal Reserve Board, not more than one of whom shall be selected from any one Federal reserve district, the President shall have due regard to a fair representation of the different commercial, industrial and geographical divisions of the country. The five members of the Federal Reserve Board appointed by the President and confirmed as aforesaid shall devote their entire time to the business of the Federal Reserve Board and shall each receive an annual salary of $12,000, payable monthly together with actual necessary traveling expenses, and the Comptroller of the Currency, as ex officio member of the Federal

Reserve Board, shall, in addition to the salary now paid him as Comptroller of the Currency, receive the sum of $7,000 annually for his services as a member of said Board.

The members of said Board, the Secretary of the Treasury, the Assistant Secretaries of the Treasury, and the Comptroller of the Currency shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank. Of the five members thus appointed by the President at least two shall be persons experienced in banking or finance. One shall be designated by the President to serve for two, one for four, one for six, one for eight, and one for ten years, and thereafter each member so appointed shall serve for a term of ten years unless sooner removed for cause by the President. Of the five persons thus appointed, one shall be designated by the President as governor and one as vice governor of the Federal Reserve Board. The governor of the Federal Reserve Board, subject to its supervision, shall be the active executive officer. The Secretary of the Treasury may assign offices in the Department of the Treasury for the use of the Federal Reserve Board. Each member of the Federal Reserve Board shall within fifteen days after notice of appointment make and subscribe to the oath of office.

The Federal Reserve Board shall have power to levy semiannually upon the Federal reserve banks, in proportion to their capital stock and surplus, an assessment sufficient to pay its estimated expenses and the salaries of its members and employees for the half year succeeding the levying of such assessment, together with any deficit carried forward from the preceding half year.

The first meeting of the Federal Reserve Board shall be held in Washington, District of Columbia, as soon as may be after the passage of this act, at a date to be fixed by the Reserve Bank Organization Committee. The Secretary of the Treasury shall be ex officio chairman of the Federal Reserve Board. No member of the Federal Reserve Board shall be an officer or director of any bank, banking institution, trust company, or Federal reserve bank nor hold stock in any bank, banking institution, or trust company; and before entering upon his duties as a member of the Federal Reserve Board he shall certify under oath to the Secretary of the Treasury that he has complied with this requirement. Whenever a vacancy shall occur, other than by expiration of term, among the five members of the Federal Reserve Board appointed

by the President, as above provided, a successor shall be appointed by the President, with the advice and consent of the Senate, to fill such vacancy, and when appointed he shall hold office for the unexpired term of the member whose place he is selected to fill.

The President shall have power to fill all vacancies that may happen on the Federal Reserve Board during the recess of the Senate, by granting commissions which shall expire thirty days after the next session of the Senate convenes.

Nothing in this act contained shall be construed as taking away any powers heretofore vested by law in the Secretary of the Treasury which relate to the supervision, management, and control of the Treasury Department and bureaus under such department, and wherever any power vested by this act in the Federal Reserve Board or the Federal reserve agent appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary.

The Federal Reserve Board shall annually make a full report of its operations to the Speaker of the House of Representatives, who shall cause the same to be printed for the information of the Congress.

Section three hundred and twenty-four of the Revised Statutes of the United States shall be amended so as to read as follows: There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of national currency secured by United States bonds and, under the general supervision of the Federal Reserve Board, of all Federal reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury.

§ **11.** The Federal Reserve Board shall be authorized and empowered:

(a) To examine at its discretion the accounts, books and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held

as reserve and the amount, nature and maturities of the paper and other investments owned or held by Federal reserve banks.

(b) To permit, or, on the affirmative vote of at least five members of the Reserve Board to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Federal Reserve Board.

(c) To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirement specified in this act: *Provided,* That it shall establish a graduated tax upon the amounts by which the reserve requirements of this act may be permitted to fall below the level hereinafter specified: *And provided further,* That when the gold reserve held against Federal reserve notes falls below forty per centum, the Federal Reserve Board shall establish a graduated tax of not more than one per centum per annum upon such deficiency until the reserves fall to thirty-two and one-half per centum, and when said reserve falls below thirty-two and one-half per centum, a tax at the rate increasingly of not less than one and one-half per centum per annum upon each two and one-half per centum or fraction thereof that such reserve falls below thirty-two and one-half per centum. The tax shall be paid by the reserve bank, but the reserve bank shall add an amount equal to said tax to the rates of interest and discount fixed by the Federal Reserve Board.

(d) To supervise and regulate through the bureau under the charge of the Comptroller of the Currency the issue and retirement of Federal reserve notes, and to prescribe rules and regulations under which such notes may be delivered by the Comptroller to the Federal reserve agents applying therefor.

(e) To add to the number of cities classified as reserve and central reserve cities under existing law in which national banking associations are subject to the reserve requirements set forth in section twenty of this act; or to reclassify existing reserve and central reserve cities or to terminate their designation as such.

(f) To suspend or remove any officer or director of any Federal reserve bank, the cause of such removal to be forthwith communicated in writing by the Federal Reserve Board to the removed officer or director and to said bank.

(g) To require the writing off of doubtful or worthless assets upon the books and balance sheets of Federal reserve banks.

(h) To suspend, for the violation of any of the provisions of this act, the operations of any Federal reserve bank, to take possession thereof, administer the same during the period of suspension, and, when deemed advisable, to liquidate or reorganize such bank.

(i) To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this act, and make all rules and regulations necessary to enable said board effectively to perform the same.

(j) To exercise general supervision over said Federal reserve banks.

(k) To grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said board may prescribe.

(l) To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. All salaries and fees shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the members of said board. All such attorneys, experts, assistants, clerks, and other employees shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided,* That nothing herein shall prevent the President from placing said employees in the classified service.

FEDERAL ADVISORY COUNCIL

§ **12.** There is hereby created a Federal Advisory Council, which shall consist of as many members as there are Federal reserve districts. Each Federal reserve bank by its board of directors shall annually select from its own Federal reserve district one member of said council, who shall receive such compensation and allowances as may be fixed by his board of directors subject to the approval of the Federal Reserve Board. The meetings of said advisory council shall be held at Washington, District of Columbia, at least four times each year, and oftener if called by the Federal Reserve Board. The council may in addition to the

meetings above provided for hold such other meetings in Washington, District of Columbia, or elsewhere, as it may deem necessary, may select its own officers and adopt its own methods of procedure, and a majority of its members shall constitute a quorum for the transaction of business. Vacancies in the council shall be filled by the respective reserve banks, and members selected to fill vacancies, shall serve for the unexpired term.

The Federal Advisory Council shall have power, by itself or through its officers, (1) to confer directly with the Federal Reserve Board on general business conditions; (2) to make oral or written representations concerning matters within the jurisdiction of said board; (3) to call for information and to make recommendations in regard to discount rates, rediscount business, note issues, reserve conditions in the various districts, the purchase and sale of gold or securities by reserve banks, open-market operations by said banks, and the general affairs of the reserve banking system.

POWERS OF FEDERAL RESERVE BANKS

§ **13.** Any Federal reserve bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks and drafts upon solvent member banks, payable upon presentation; or, solely for exchange purposes, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks and drafts upon solvent member or other Federal reserve banks, payable upon presentation.

Upon the indorsement of any of its member banks, with a waiver of demand, notice and protest by such bank, any Federal reserve bank may discount notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Federal Reserve Board to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this act. Nothing in this act contained shall be construed to prohibit such notes, drafts, and bills of exchange, secured by staple agricultural products, or other goods, wares, or merchandise

from being eligible for such discount; but such definition shall not include notes, drafts, or bills covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States. Notes, drafts, and bills admitted to discount under the terms of this paragraph must have a maturity at the time of discount of not more than ninety days: *Provided*, That notes, drafts, and bills drawn or issued for agricultural purposes or based on live stock and having a maturity not exceeding six months may be discounted in an amount to be limited to a percentage of the capital of the Federal reserve bank, to be ascertained and fixed by the Federal Reserve Board.

Any Federal reserve bank may discount acceptances which are based on the importation or exportation of goods and which have a maturity at time of discount of not more than three months, and indorsed by at least one member bank. The amount of acceptances so discounted shall at no time exceed one-half the paid-up capital stock and surplus of the bank for which the rediscounts are made.

The aggregate of such notes and bills bearing the signature or indorsement of any one person, company, firm, or corporation rediscounted for any one bank shall at no time exceed ten per centum of the unimpaired capital and surplus of said bank; but this restriction shall not apply to the discount of bills of exchange drawn in good faith against actually existing values.

Any member bank may accept drafts or bills of exchange drawn upon it and growing out of transactions involving the importation or exportation of goods having not more than six months sight to run; but no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half its paid-up capital stock and surplus.

Section fifty-two hundred and two of the Revised Statutes of the United States is hereby amended so as to read as follows: No national banking association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

First. Notes of circulation.

Second. Moneys deposited with or collected by the association.

Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

Fourth. Liabilities to the stockholders of the association for dividends and reserve profits.

Fifth. Liabilities incurred under the provisions of the Federal Reserve Act.

The rediscount by any Federal reserve bank of any bills receivable and of domestic and foreign bills of exchange, and of acceptances authorized by this act, shall be subject to such restrictions, limitations, and regulations as may be imposed by the Federal Reserve Board.

OPEN-MARKET OPERATIONS

§ 14. Any Federal reserve bank may, under rules and regulations prescribed by the Federal Reserve Board, purchase and sell in the open market, at home or abroad, either from or to domestic or foreign banks, firms, corporations, or individuals, cable transfers and bankers' acceptances and bills of exchange of the kinds and maturities by this act made eligible for rediscount, with or without the indorsement of a member bank.

Every Federal reserve bank shall have power:

(a) To deal in gold coin and bullion at home or abroad, to make loans thereon, exchange Federal reserve notes for gold, gold coin, or gold certificates, and to contract for loans of gold coin or bullion, giving therefor, when necessary, acceptable security, including the hypothecation of United States bonds or other securities which Federal reserve banks are authorized to hold;

(b) To buy and sell, at home or abroad, bonds and notes of the United States, and bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding six months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage and reclamation districts, such purchases to be made in accordance with rules and regulations prescribed by the Federal Reserve Board;

(c) To purchase from member banks and to sell, with or without its indorsement, bills of exchange arising out of commercial transactions, as hereinbefore defined;

(d) To establish from time to time, subject to review and determination of the Federal Reserve Board, rates of discount to be charged by the Federal reserve bank for each class of paper, which shall be fixed with a view of accommodating commerce and business;

(e) To establish accounts with other Federal reserve banks for exchange purposes and, with the consent of the Federal Reserve Board, to open and maintain banking accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may deem best for the purpose of purchasing, selling, and collecting bills of exchange, and to buy and sell with or without its indorsement, through such correspondents or agencies, bills of exchange arising out of actual commercial transactions which have not more than ninety days to run and which bear the signature of two or more responsible parties.

GOVERNMENT DEPOSITS

§ **15.** The moneys held in the general fund of the Treasury, except the five per centum fund for the redemption of outstanding national-bank notes and the funds provided in this act for the redemption of Federal reserve notes may, upon the direction of the Secretary of the Treasury, be deposited in Federal reserve banks, which banks, when required by the Secretary of the Treasury, shall act as fiscal agents of the United States; and the revenues of the Government or any part thereof may be deposited in such banks, and disbursements may be made by checks drawn against such deposits.

No public funds of the Philippine Islands, or of the postal savings, or any government funds, shall be deposited in the continental United States in any bank not belonging to the system established by this act: *Provided, however,* That nothing in this act shall be construed to deny the right of the Secretary of the Treasury to use member banks as depositories.

NOTE ISSUES

§ **16.** Federal reserve notes, to be issued at the discretion of the Federal Reserve Board for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all

taxes, customs, and other public dues. They shall be redeemed in gold on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or in gold or lawful money at any Federal reserve bank.

Any Federal reserve bank may make application to the local Federal reserve agent for such amount of the Federal reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal reserve agent of collateral in amount equal to the sum of the Federal reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes and bills, accepted for rediscount under the provisions of section thirteen of this act, and the Federal reserve agent shall each day notify the Federal Reserve Board of all issues and withdrawals of Federal reserve notes to and by the Federal reserve bank to which he is accredited. The said Federal Reserve Board may at any time call upon a Federal reserve bank for additional security to protect the Federal reserve notes issued to it.

Every Federal reserve bank shall maintain reserves in gold or lawful money of not less than thirty-five per centum against its deposits and reserves in gold of not less than forty per centum against its Federal reserve notes in actual circulation, and not offset by gold or lawful money deposited with the Federal reserve agent. Notes so paid out shall bear upon their faces a distinctive letter and serial number, which shall be assigned by the Federal Reserve Board to each Federal reserve bank. Whenever Federal reserve notes issued through one Federal reserve bank shall be received by another Federal reserve bank they shall be promptly returned for credit or redemption to the Federal reserve bank through which they were originally issued. No Federal reserve bank shall pay out notes issued through another under penalty of a tax of ten per centum upon the face value of notes so paid out. Notes presented for redemption at the Treasury of the United States shall be paid out of the redemption fund and returned to the Federal reserve banks through which they were originally issued, and thereupon such Federal reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal reserve notes have been redeemed by the Treasurer in gold or gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold or gold certificates, and such Federal

reserve bank shall, so long as any of its Federal reserve notes remain outstanding, maintain with the Treasurer in gold an amount sufficient in the judgment of the Secretary to provide for all redemptions to be made by the Treasurer. Federal reserve notes received by the Treasury, otherwise than for redemption, may be exchanged for gold out of the redemption fund hereinafter provided and returned to the reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States. Federal reserve notes unfit for circulation shall be returned by the Federal reserve agents to the Comptroller of the Currency for cancellation and destruction.

The Federal Reserve Board shall require each Federal reserve bank to maintain on deposit in the Treasury of the United States a sum in gold sufficient in the judgment of the Secretary of the Treasury for the redemption of the Federal reserve notes issued to such bank, but in no event less than five per centum; but such deposit of gold shall be counted and included as part of the forty per centum reserve hereinbefore required. The board shall have the right, acting through the Federal reserve agent, to grant in whole or in part or to reject entirely the application of any Federal reserve bank for Federal reserve notes; but to the extent that such application may be granted the Federal Reserve Board shall, through its local Federal reserve agent, supply Federal reserve notes to the bank so applying, and such bank shall be charged with the amount of such notes and shall pay such rate of interest on said amount as may be established by the Federal Reserve Board, and the amount of such Federal reserve notes so issued to any such bank shall, upon delivery, together with such notes of such Federal reserve bank as may be issued under section eighteen of this act upon security of United States two per centum government bonds, become a first and paramount lien on all the assets of such bank.

Any Federal reserve bank may at any time reduce its liability for outstanding Federal reserve notes by depositing, with the Federal reserve agent, its Federal reserve notes, gold, gold certificates, or lawful money of the United States. Federal reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

The Federal reserve agent shall hold such gold, gold certificates, or lawful money available exclusively for exchange for the outstanding Federal reserve notes when offered by the reserve bank of which he is

a director. Upon the request of the Secretary of the Treasury the Federal Reserve Board shall require the Federal reserve agent to transmit so much of said gold to the Treasury of the United States as may be required for the exclusive purpose of the redemption of such notes.

Any Federal reserve bank may at its discretion withdraw collateral deposited with the local Federal reserve agent for the protection of its Federal reserve notes deposited with it and shall at the same time substitute therefor other like collateral of equal amount with the approval of the Federal reserve agent under regulations to be prescribed by the Federal Reserve Board.

In order to furnish suitable notes for circulation as Federal reserve notes, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of $5, $10, $20, $50, $100, as may be required to supply the Federal reserve banks. Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this act and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued.

When such notes have been prepared, they shall be deposited in the Treasury, or in the subtreasury or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency for their delivery, as provided by this act.

The plates and dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws relating to the procuring of such notes, and all other expenses incidental to their issue and retirement, shall be paid by the Federal reserve banks, and the Federal Reserve Board shall include in its estimate of expenses levied against the Federal reserve banks a sufficient amount to cover the expenses herein provided for.

The examination of plates, dies, bed pieces, and so forth, and regulations relating to such examination of plates, dies, and so forth, of national-bank notes provided for in section fifty-one hundred and seventy-four Revised Statutes, is hereby extended to include notes herein provided for.

Any appropriation heretofore made out of the general funds of the Treasury for engraving plates and dies, the purchase of distinctive paper, or to cover any other expense in connection with the printing of national-bank notes or notes provided for by the Act of May thirtieth nineteen hundred and eight, and any distinctive paper that may be on hand at the time of the passage of this act may be used in the discretion of the Secretary for the purposes of this act, and should the appropriations heretofore made be insufficient to meet the requirements of this act in addition to circulating notes provided for by existing law, the Secretary is hereby authorized to use so much of any funds in the Treasury not otherwise appropriated for the purpose of furnishing the notes aforesaid: *Provided, however,* That nothing in this section contained shall be construed as exempting national banks or Federal reserve banks from their liability to reimburse the United States for any expenses incurred in printing and issuing circulating notes.

Every Federal reserve bank shall receive on deposit at par from member banks or from Federal reserve banks checks and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and drafts drawn by any depositor in any other Federal reserve bank or member bank upon funds to the credit of said depositor in said reserve bank or member bank. Nothing herein contained shall be construed as prohibiting a member bank from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Federal Reserve Board shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank.

The Federal Reserve Board shall make and promulgate from time to time regulations governing the transfer of funds and charges therefor among Federal reserve banks and their branches, and may at its discretion exercise the functions of a clearing house for such Federal reserve banks, or may designate a Federal reserve bank to exercise such functions, and may also require each such bank to exercise the functions of a clearing house for its member banks.

§ **17.** So much of the provisions of section fifty-one hundred and fifty-nine of the Revised Statutes of the United States, and section four

of the Act of June twentieth, eighteen hundred and seventy-four, and section eight of the Act of July twelfth, eighteen hundred and eighty-two, and of any other provisions of existing statutes as require that before any national banking associations shall be authorized to commence banking business it shall transfer and deliver to the Treasurer of the United States a stated amount of United States registered bonds is hereby repealed

REFUNDING BONDS

§ 18. After two years from the passage of this act, and at any time during a period of twenty years thereafter, any member bank desiring to retire the whole or any part of its circulating notes, may file with the Treasurer of the United States an application to sell for its account, at par and accrued interest, United States bonds securing circulation to be retired.

The Treasurer shall, at the end of each quarterly period, furnish the Federal Reserve Board with a list of such applications, and the Federal Reserve Board may, in its discretion, require the Federal reserve banks to purchase such bonds from the banks whose applications have been filed with the Treasurer at least ten days before the end of any quarterly period at which the Federal Reserve Board may direct the purchase to be made: *Provided*, That Federal reserve banks shall not be permitted to purchase an amount to exceed $25,000,000 of such bonds in any one year, and which amount shall include bonds acquired under section four of this act by the Federal reserve bank.

Provided further, That the Federal Reserve Board shall allot to each Federal reserve bank such proportion of such bonds as the capital and surplus of such bank shall bear to the aggregate capital and surplus of all the Federal reserve banks.

Upon notice from the Treasurer of the amount of bonds so sold for its account, each member bank shall duly assign and transfer, in writing, such bonds to the Federal reserve bank purchasing the same, and such Federal reserve bank shall, thereupon, deposit lawful money with the Treasurer of the United States for the purchase price of such bonds, and the Treasurer shall pay to the member bank selling such bonds any balance due after deducting a sufficient sum to redeem its outstanding notes secured by such bonds, which notes shall be canceled and permanently retired when redeemed.

The Federal reserve banks purchasing such bonds shall be permitted to take out an amount of circulating notes equal to the par value of such bonds.

Upon the deposit with the Treasurer of the United States of bonds so purchased, or any bonds with the circulating privilege acquired under section four of this act, any Federal reserve bank making such deposit in the manner provided by existing law, shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited. Such notes shall be the obligations of the Federal reserve bank procuring the same, and shall be in form prescribed by the Secretary of the Treasury, and to the same tenor and effect as national-bank notes now provided by law. They shall be issued and redeemed under the same terms and conditions as national-bank notes except that they shall not be limited to the amount of the capital stock of the Federal reserve bank issuing them.

Upon application of any Federal reserve bank, approved by the Federal Reserve Board, the Secretary of the Treasury may issue, in exchange for United States two per centum gold bonds bearing the circulation privilege, but against which no circulation is outstanding, one-year gold notes of the United States without the circulation privilege, to an amount not to exceed one-half of the two per centum bonds so tendered for exchange, and thirty-year three per centum gold bonds without the circulation privilege for the remainder of the two per centum bonds so tendered: *Provided*, That at the time of such exchange the Federal reserve bank obtaining such one-year gold notes shall enter into an obligation with the Secretary of the Treasury binding itself to purchase from the United States for gold at the maturity of such one-year notes, an amount equal to those delivered in exchange for such bonds, if so requested by the Secretary, and at each maturity of one-year notes so purchased by such Federal reserve bank, to purchase from the United States such an amount of one-year notes as the Secretary may tender to such bank, not to exceed the amount issued to such bank in the first instance, in exchange for the two per centum United States gold bonds; said obligation to purchase at maturity such notes shall continue in force for a period not to exceed thirty years.

For the purpose of making the exchange herein provided for, the Secretary of the Treasury is authorized to issue at par Treasury notes

in coupon or registered form as he may prescribe in denominations of one hundred dollars, or any multiple thereof, bearing interest at the rate of three per centum per annum, payable quarterly, such Treasury notes to be payable not more than one year from the date of their issue in gold coin of the present standard value, and to be exempt as to principal and interest from the payment of all taxes and duties of the United States except as provided by this act, as well as from taxes in any form by or under State, municipal, or local authorities. And for the same purpose, the Secretary is authorized and empowered to issue United States gold bonds at par, bearing three per centum interest payable thirty years from date of issue, such bonds to be of the same general tenor and effect and to be issued under the same general terms and conditions as the United States three per centum bonds without the circulation privilege now issued and outstanding.

Upon application of any Federal reserve bank, approved by the Federal Reserve Board, the Secretary may issue at par such three per centum bonds in exchange for the one-year gold notes herein provided for.

BANK RESERVES

§ **19.** Demand deposits within the meaning of this act shall comprise all deposits payable within thirty days, and time deposits shall comprise all deposits payable after thirty days, and all savings accounts and certificates of deposit which are subject to not less than thirty days' notice before payment.

When the Secretary of the Treasury shall have officially announced, in such manner as he may elect, the establishment of a Federal reserve bank in any district, every subscribing member bank shall establish and maintain reserves as follows:

(a) A bank not in a reserve or central reserve city as now or hereafter defined shall hold and maintain reserves equal to twelve per centum of the aggregate amount of its demand deposits and five per centum of its time deposits, as follows:

In its vaults for a period of thirty-six months after said date five-twelfths thereof and permanently thereafter four-twelfths.

In the Federal reserve bank of its district, for a period of twelve months after said date, two-twelfths, and for each succeeding six months

an additional one-twelfth, until five-twelfths have been so deposited, which shall be the amount permanently required.

For a period of thirty-six months after said date the balance of the reserves may be held in its own vaults, or in the Federal reserve bank, or in national banks in reserve or central reserve cities as now defined by law.

After said thirty-six months' period said reserves, other than those hereinbefore required to be held in the vaults of the member bank and in the Federal reserve bank, shall be held in the vaults of the member bank or in the Federal reserve bank, or in both, at the option of the member bank.

(b) A bank in a reserve city, as now or hereafter defined, shall hold and maintain reserves equal to fifteen per centum of the aggregate amount of its demand deposits and five per centum of its time deposits, as follows:

In its vaults for a period of thirty-six months after said date six-fifteenths thereof, and permanently thereafter five-fifteenths.

In the Federal reserve bank of its district for a period of twelve months after the date aforesaid at least three-fifteenths, and for each succeeding six months an additional one-fifteenth, until six-fifteenths have been so deposited, which shall be the amount permanently required.

For a period of thirty-six months after said date the balance of the reserves may be held in its own vaults, or in the Federal reserve bank, or in national banks in reserve or central reserve cities as now defined by law.

After said thirty-six months' period all of said reserves, except those hereinbefore required to be held permanently in the vaults of the member bank and in the Federal reserve bank, shall be held in its vaults or in the Federal reserve bank, or in both, at the option of the member bank.

(c) A bank in a central reserve city, as now or hereafter defined, shall hold and maintain a reserve equal to eighteen per centum of the aggregate amount of its demand deposits and five per centum of its time deposits, as follows:

In its vaults six-eighteenths thereof.

In the Federal reserve bank seven-eighteenths.

The balance of said reserves shall be held in its own vaults or in the Federal reserve bank, at its option.

Any Federal reserve bank may receive from the member banks as reserves, not exceeding one-half of each installment, eligible paper as described in section fourteen properly indorsed and acceptable to the said reserve bank.

If a State bank or trust company is required by the law of its State to keep its reserves either in its own vaults or with another State bank or trust company, such reserve deposits so kept in such State bank or trust company shall be construed, within the meaning of this section, as if they were reserve deposits in a national bank in a reserve or central reserve city for a period of three years after the Secretary of the Treasury shall have officially announced the establishment of a Federal reserve bank in the district in which such State bank or trust company is situate. Except as thus provided, no member bank shall keep on deposit with any nonmember bank a sum in excess of ten per centum of its own paid-up capital and surplus. No member bank shall act as the medium or agent of a nonmember bank in applying for or receiving discounts from a Federal reserve bank under the provisions of this act except by permission of the Federal Reserve Board.

The reserve carried by a member bank with a Federal reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Federal Reserve Board, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities: *Provided, however,* That no bank shall at any time make new loans or shall pay any dividends unless and until the total reserve required by law is fully restored.

In estimating the reserves required by this act, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposits against which reserves shall be determined. Balances in reserve banks due to member banks shall, to the extent herein provided, be counted as reserves.

National banks located in Alaska or outside the continental United States may remain nonmember banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks, except in the Philippine Islands, may, with the consent of the Reserve Board, become member banks of any one of the reserve districts, and shall, in that event, take stock, maintain reserves, and be subject to all the other provisions of this act.

§ **20.** So much of sections two and three of the Act of June twentieth, eighteen hundred and seventy-four, entitled "An act fixing the amount of United States notes, providing for a redistribution of the national-bank currency, and for other purposes," as provides that the fund deposited by any national banking association with the Treasurer of the United States for the redemption of its notes shall be counted as a part of its lawful reserve as provided in the act aforesaid, is hereby repealed. And from and after the passage of this act such fund of five per centum shall in no case be counted by any national banking association as a part of its lawful reserve.

BANK EXAMINATIONS

§ **21.** Section fifty-two hundred and forty, United States Revised Statutes, is amended to read as follows:

The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every member bank at least twice in each calendar year and oftener if considered necessary: *Provided, however,* That the Federal Reserve Board may authorize examination by the State authorities to be accepted in the case of State banks and trust companies and may at any time direct the holding of a special examination of State banks or trust companies that are stockholders in any Federal reserve bank. The examiner making the examination of any national bank, or of any other member bank, shall have power to make a thorough examination of all the affairs of the bank and in doing so he shall have power to administer oaths and to examine any of the officers and agents thereof under oath and shall make a full and detailed report of the condition of said bank to the Comptroller of the Currency.

The Federal Reserve Board, upon the recommendation of the Comptroller of the Currency, shall fix the salaries of all bank examiners and make report thereof to Congress. The expense of the examinations herein provided for shall be assessed by the Comptroller of the Currency upon the banks examined in proportion to assets or resources held by the banks upon the dates of examination of the various banks.

In addition to the examinations made and conducted by the Comptroller of the Currency, every Federal reserve bank may, with the approval of the Federal reserve agent or the Federal Reserve Board, provide for special examination of member banks within its district.

The expense of such examinations shall be borne by the bank examined. Such examinations shall be so conducted as to inform the Federal reserve bank of the condition of its member banks and of the lines of credit which are being extended by them. Every Federal reserve bank shall at all times furnish to the Federal Reserve Board such information as may be demanded concerning the condition of any member bank within the district of the said Federal reserve bank.

No bank shall be subject to any visitatorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized.

The Federal Reserve Board shall, at least once each year, order an examination of each Federal reserve bank, and upon joint application of ten member banks the Federal Reserve Board shall order a special examination and report of the condition of any Federal reserve bank.

§ **22.** No member bank or any officer, director, or employee thereof shall hereafter make any loan or grant any gratuity to any bank examiner. Any bank officer, director, or employee violating this provision shall be deemed guilty of a misdemeanor and shall be imprisoned not exceeding one year or fined not more than $5,000, or both; and may be fined a further sum equal to the money so loaned or gratuity given. Any examiner accepting a loan or gratuity from any bank examined by him or from an officer, director, or employee thereof shall be deemed guilty of a misdemeanor and shall be imprisoned not exceeding one year or fined not more than $5,000, or both; and may be fined a further sum equal to the money so loaned or gratuity given; and shall forever thereafter be disqualified from holding office as a national-bank examiner. No national-bank examiner shall perform any other service for compensation while holding such office for any bank or officer, director, or employee thereof.

Other than the usual salary or director's fee paid to any officer, director, or employee of a member bank and other than a reasonable fee paid by said bank to such officer, director, or employee for services rendered to such bank, no officer, director, employee, or attorney of a member bank shall be a beneficiary of or receive, directly or indirectly,

any fee, commission, gift, or other consideration for or in connection with any transaction or business of the bank. No examiner, public or private, shall disclose the names of borrowers or the collateral for loans of a member bank to other than the proper officers of such bank without first having obtained the express permission in writing from the Comptroller of the Currency, or from the board of directors of such bank, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or of either House thereof, or any committee of Congress or of either House duly authorized. Any person violating any provision of this section shall be punished by a fine of not exceeding $5,000 or by imprisonment not exceeding one year, or both.

Except as provided in existing laws, this provision shall not take effect until sixty days after the passage of this act.

§ **23.** The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagements of such association, each to the amount of his stock therein, at the par value thereof in addition to the amount invested in such stock. The stockholders in any national banking association who shall have transferred their shares or registered the transfer thereof within sixty days next before the date of the failure of such association to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such shareholders might otherwise have against those in whose names such shares are registered at the time of such failure.

LOANS ON FARM LANDS

§ **24.** Any national banking association not situated in a central reserve city may make loans secured by improved and unencumbered farm land, situated within its Federal reserve district, but no such loan shall be made for a longer time than five years, nor for an amount exceeding fifty per centum of the actual value of the property offered as security. Any such bank may make such loans in an aggregate sum equal to twenty-five per centum of its capital and surplus or to one-third

of its time deposits and such banks may continue hereafter as heretofore to receive time deposits and to pay interest on the same.

The Federal Reserve Board shall have power from time to time to add to the list of cities in which national banks shall not be permitted to make loans secured upon real estate in the manner described in this section.

FOREIGN BRANCHES

§ 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board, upon such conditions and under such regulations as may be prescribed by the said board, for the purpose of securing authority to establish branches in foreign countries or dependencies of the United States for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States. Such application shall specify, in addition to the name and capital of the banking association filing it, the place or places where the banking operations proposed are to be carried on, and the amount of capital set aside for the conduct of its foreign business. The Federal Reserve Board shall have power to approve or to reject such application if, in its judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient.

Every national banking association which shall receive authority to establish foreign branches shall be required at all times to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and the Federal Reserve Board may order special examinations of the said foreign branches at such time or times as it may deem best. Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accruing at each branch as a separate item.

§ 26. All provisions of law inconsistent with or superseded by any of the provisions of this act are to that extent and to that extent only hereby repealed: *Provided,* Nothing in this act contained shall be construed to repeal the parity provision or provisions contained in an

act approved March fourteenth, nineteen hundred entitled "An act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes," and the Secretary of the Treasury may for the purpose of maintaining such parity and to strengthen the gold reserve, borrow gold on the security of United States bonds authorized by section two of the act last referred to or for one-year gold notes bearing interest at a rate of not to exceed three per centum per annum, or sell the same if necessary to obtain gold. When the funds of the Treasury on hand justify, he may purchase and retire such outstanding bonds and notes.

§ 27. The provisions of the Act of May thirtieth, nineteen hundred and eight, authorizing national currency associations, the issue of additional national-bank circulation, and creating a National Monetary Commission, which expires by limitation under the terms of such act on the thirtieth day of June, nineteen hundred and fourteen, are hereby extended to June thirtieth, nineteen hundred and fifteen, and sections fifty-one hundred and fifty-three, fifty-one hundred and seventy-two, fifty-one hundred and ninety-one, and fifty-two hundred and fourteen of the Revised Statutes of the United States, which were amended by the Act of May thirtieth, nineteen hundred and eight, are hereby re-enacted to read as such sections read prior to May thirtieth, nineteen hundred and eight, subject to such amendments or modifications as are prescribed in this act: *Provided, however,* That section nine of the act first referred to in this section is hereby amended so as to change the tax rates fixed in said act by making the portion applicable thereto read as follows:

National banking associations having circulating notes secured otherwise than by bonds of the United States, shall pay for the first three months a tax at the rate of three per centum per annum upon the average amount of such of their notes in circulation as are based upon the deposit of such securities, and afterwards an additional tax rate of one-half of one per centum per annum for each month until a tax of six per centum per annum is reached, and thereafter such tax of six per centum per annum upon the average amount of such notes.

§ 28. Section fifty-one hundred and forty-three of the Revised Statutes is hereby amended and re-enacted to read as follows: Any associa

§ **27.** Amended August 4, 1914. See Addenda page 239.

tion formed under this title may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by this title to authorize the formation of associations; but no such reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by the said Comptroller of the Currency and by the Federal Reserve Board, or by the organization committee pending the organization of the Federal Reserve Board.

§ **29.** If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ **30.** The right to amend, alter, or repeal this act is hereby expressly reserved.

Approved December 23, 1913.

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ADDENDA

ADDENDA

THE FOLLOWING AMENDMENT TO THE ALDRICH-VREELAND ACT WAS ADOPTED AUGUST 4, 1914

An act to amend section twenty-seven of an Act approved December twenty-third, nineteen hundred and thirteen, and known as the Federal Reserve Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-seven of the Act approved December twenty-third, nineteen hundred and thirteen, known as the Federal Reserve Act is hereby amended and reenacted to read as follows:

"SEC. 27. The provisions of the Act of May thirtieth, nineteen hundred and eight, authorizing national currency associations, the issue of additional national-bank circulation, and creating a National Monetary Commission, which expires by limitation under the terms of such Act on the thirtieth day of June, nineteen hundred and fourteen, are hereby extended to June thirtieth, nineteen hundred and fifteen, and sections fifty-one hundred and fifty-three, fifty-one hundred and seventy-two, fifty-one hundred and ninety-one, and fifty-two hundred and fourteen of the Revised Statutes of the United States, which were amended by the Act of May thirtieth, nineteen hundred and eight, are hereby re-enacted to read as such sections read prior to May thirtieth, nineteen hundred and eight, subject to such amendments or modifications as are prescribed in this Act: *Provided, however,* That section nine of the Act first referred to in this section is hereby amended so as to change the tax rates fixed in said Act by making the portion applicable thereto read as follows:

"National banking associations having circulating notes secured otherwise than by bonds of the United States, shall pay for the first three

months a tax at the rate of three per centum per annum upon the average amount of such of their notes in circulation as are based upon the deposit of such securities, and afterwards an additional tax rate of one-half of one per centum per annum for each month until a tax of six per centum per annum is reached, and thereafter such tax of six per centum per annum upon the average amount of such notes: *Provided further,* That whenever in his judgment he may deem it desirable, the Secretary of the Treasury shall have power to suspend the limitations imposed by section one and section three of the Act referred to in this section, which prescribe that such additional circulation secured otherwise than by bonds of the United States shall be issued only to national banks having circulating notes outstanding secured by the deposit of bonds of the United States to an amount not less than forty per centum of the capital stock of such banks, and to suspend also the conditions and limitations of section five of said Act except that no bank shall be permitted to issue circulating notes in excess of one hundred and twenty-five per centum of its unimpaired capital and surplus. He shall require each bank and currency association to maintain on deposit in the Treasury of the United States a sum in gold sufficient in his judgment for the redemption of such notes, but in no event less than five per centum. He may permit national banks, during the period for which such provisions are suspended, to issue additional circulation under the terms and conditions of the Act referred to as herein amended: *Provided further,* That the Secretary of the Treasury, in his discretion, is further authorized to extend the benefits of this Act to all qualified State banks and trust companies, which have joined the Federal reserve system, or which may contract to join within fifteen days after the passage of this Act."

THE ALDRICH-VREELAND ACT EXPIRED JUNE 30, 1914. THE FOREGOING AMENDMENT EXTENDS THE PROVISIONS OF THAT ACT TO JUNE 30, 1915.

THE ALDRICH-VREELAND ACT WAS ADOPTED MAY 30, 1908, AND IS AS FOLLOWS

An act to amend the national banking laws

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That national banking associations, each having an unimpaired capital and a surplus of not less than

twenty per centum, not less than ten in number, having an aggregate capital and surplus of at least five millions of dollars, may form voluntary associations to be designated as national currency associations. The banks uniting to form such association shall, by their presidents or vice-presidents, acting under authority from the board of directors, make and file with the Secretary of the Treasury a certificate setting forth the names of the banks composing the association, the principal place of business of the association, and the name of the association, which name shall be subject to the approval of the Secretary of the Treasury. Upon the filing of such certificate the associated banks therein named shall become a body corporate, and by the name so designated and approved may sue and be sued and exercise the powers of a body corporate for the purposes hereinafter mentioned: *Provided,* That not more than one such national currency association shall be formed in any city: *Provided further,* That the several members of such national currency association shall be taken, as nearly as conveniently may be, from a territory composed of a State or part of a State, or contiguous parts of one or more States: *And provided further,* That any national bank in such city or territory, having the qualifications herein prescribed for membership in such national currency association, shall, upon its application to and upon the approval of the Secretary of the Treasury, be admitted to membership in a national currency association for that city or territory, and upon such admission shall be deemed and held a part of the body corporate, and as such entitled to all the rights and privileges and subject to all the liabilities of an original member: *And provided further,* That each national currency association shall be composed exclusively of banks not members of any other national currency association.

The dissolution, voluntary or otherwise, of any bank in such association shall not affect the corporate existence of the association unless there shall then remain less than the minimum number of ten banks: *Provided, however,* That the reduction of the number of said banks below the minimum of ten shall not affect the existence of the corporation with respect to the assertion of all rights in favor of or against such association. The affairs of the association shall be managed by a board consisting of one representative from each bank. By-laws for the government of the association shall be made by the board, subject to the approval of the Secretary of the Treasury. A president, vice-president,

secretary, treasurer, and an executive committee of not less than five members, shall be elected by the board. The powers of such board, except in the election of officers and making of by-laws, may be exercised through its executive committee.

The national currency association herein provided for shall have and exercise any and all powers necessary to carry out the purposes of this section, namely, to render available, under the direction and control of the Secretary of the Treasury, as a basis for additional circulation any securities, including commercial paper, held by a national banking association. For the purpose of obtaining such additional circulation, any bank belonging to any national currency association, having circulating notes outstanding secured by the deposit of bonds of the United States to an amount not less than forty per centum of its capital stock, and which has its capital unimpaired and a surplus of not less than twenty per centum, may deposit with and transfer to the association, in trust for the United States, for the purpose hereinafter provided, such of the securities above mentioned as may be satisfactory to the board of the association. The officers of the association may thereupon, in behalf of such bank, make application to the Comptroller of the Currency for an issue of additional circulating notes to an amount not exceeding seventy-five per centum of the cash value of the securities or commercial paper so deposited. The Comptroller of the Currency shall immediately transmit such application to the Secretary of the Treasury with such recommendation as he thinks proper, and if, in the judgment of the Secretary of the Treasury, business conditions in the locality demand additional circulation, and if he be satisfied with the character and value of the securities proposed and that a lien in favor of the United States on the securities so deposited and on the assets of the banks composing the association will be amply sufficient for the protection of the United States, he may direct an issue of additional circulating notes to the association, on behalf of such bank, to an amount in his discretion, not, however, exceeding seventy-five per centum of the cash value of the securities so deposited: *Provided,* That upon the deposit of any of the State, city, town, county, or other municipal bonds, of a character described in section three of this Act, circulating notes may be issued to the extent of not exceeding ninety per centum of the market value of such bonds so deposited: *And provided further,* That no national banking association shall be authorized in any event to issue circulating notes

based on commercial paper in excess of thirty per centum of its unimpaired capital and surplus. The term "commercial paper" shall be held to include only notes representing actual commercial transactions, which when accepted by the association shall bear the names of at least two responsible parties and have not exceeding four months to run.

The banks and the assets of all banks belonging to the association shall be jointly and severally liable to the United States for the redemption of such additional circulation; and to secure such liability the lien created by section fifty-two hundred and thirty of the Revised Statutes shall extend to and cover the assets of all banks belonging to the associ- tion, and to the securities deposited by the banks with the association pursuant to the provisions of this Act; but as between the several banks composing such association each bank shall be liable only in the proportion that its capital and surplus bears to the aggregate capital and surplus of all such banks. The association may, at any time, require of any of its constituent banks a deposit of additional securities or commercial paper, or an exchange of the securities already on deposit, to secure such additional circulation; and in case of the failure of such bank to make such deposit or exchange the association may, after ten days' notice to the bank, sell the securities and paper already in its hands at public sale, and deposit the proceeds with the Treasurer of the United States as a fund for the redemption of such additional circulation. If such fund be insufficient for that purpose the association may recover from the bank the amount of the deficiency by suit in the circuit court of the United States, and shall have the benefit of the lien hereinbefore provided for in favor of the United States upon the assets of such bank. The association or the Secretary of the Treasury may permit or require the withdrawal of any such securities or commercial paper and the substitution of other securities or commercial paper of equal value therefor.

Sec. 2. That whenever any bank belonging to a national currency association shall fail to preserve or make good its redemption fund in the Treasury of the United States, required by section three of the Act of June twentieth, eighteen hundred and seventy-four, chapter three hundred and forty-three, and the provisions of this Act, the Treasurer of the United States shall notify such national currency association to make good such redemption fund, and upon the failure of such national currency association to make good such fund, the Treasurer of the United

States may, in his discretion, apply so much of the redemption fund belonging to the other banks composing such national currency association as may be necessary for that purpose; and such national currency association may, after five days' notice to such bank, proceed to sell at public sale the securities deposited by such bank with the association pursuant to the provisions of section one of this Act, and deposit the proceeds with the Treasurer of the United States as a fund for the redemption of the additional circulation taken out by such bank under this Act.

SEC. 3. That any national banking association which has circulating notes outstanding, secured by the deposit of United States bonds to an amount of not less than forty per centum of its capital stock, and which has a surplus of not less than twenty per centum, may make application to the Comptroller of the Currency for authority to issue additional circulating notes to be secured by the deposit of bonds other than bonds of the United States. The Comptroller of the Currency shall transmit immediately the application, with his recommendation, to the Secretary of the Treasury, who shall, if in his judgment business conditions in the locality demand additional circulation, approve the same, and shall determine the time of issue and fix the amount, within the limitations herein imposed, of the additional circulating notes to be issued. Whenever after receiving notice of such approval any such association shall deposit with the Treasurer or any assistant treasurer of the United States such of the bonds described in this section as shall be approved in character and amount by the Treasurer of the United States and the Secretary of the Treasury, it shall be entitled to receive, upon the order of the Comptroller of the Currency, circulating notes in blank, registered and countersigned as provided by law, not exceeding in amount ninety per centum of the market value, but not in excess of the par value of any bonds so deposited, such market value to be ascertained and determined under the direction of the Secretary of the Treasury.

The Treasurer of the United States, with the approval of the Secretary of the Treasury, shall accept as security for the additional circulating notes provided for in this section, bonds or other interest-bearing obligations of any State of the United States, or any legally authorized bonds issued by any city, town, county, or other legally constituted municipality or district in the United States which has been in existence for a period of ten years, and which for a period of ten years previous to

such deposit has not defaulted in the payment of any part of either principal or interest of any funded debt authorized to be contracted by it, and whose net funded indebtedness does not exceed ten per centum of the valuation of its taxable property, to be ascertained by the last preceding valuation of property for the assessment of taxes. The Treasurer of the United States, with the approval of the Secretary of the Treasury, shall accept, for the purposes of this section, securities herein enumerated in such proportions as he may from time to time determine, and he may with such approval at any time require the deposit of additional securities, or require any association to change the character of the securities already on deposit.

SEC. 4. That the legal title of all bonds, whether coupon or registered, deposited to secure circulating notes issued in accordance with the terms of section three of this Act shall be transferred to the Treasurer of the United States in trust for the association depositing them, under regulations to be prescribed by the Secretary of the Treasury. A receipt shall be given to the association by the Treasurer or any assistant treasurer of the United States, stating that such bond is held in trust for the association on whose behalf the transfer is made, and as security for the redemption and payment of any circulating notes that have been or may be delivered to such association. No assignment or transfer of any such bond by the Treasurer shall be deemed valid unless countersigned by the Comptroller of the Currency. The provisions of sections fifty-one hundred and sixty-three, fifty-one hundred and sixty-four, fifty-one hundred and sixty-five, fifty-one hundred and sixty-six, and fifty-one hundred and sixty-seven and sections fifty-two hundred and twenty-four to fifty-two hundred and thirty-four, inclusive, of the Revised Statutes respecting United States bonds deposited to secure circulating notes shall, except as herein modified, be applicable to all bonds deposited under the terms of section three of this Act.

SEC. 5. That the additional circulating notes issued under this Act shall be used, held, and treated in the same way as circulating notes of national banking associations heretofore issued and secured by a deposit of United States bonds, and shall be subject to all the provisions of law affecting such notes except as herein expressly modified: *Provided,* That the total amount of circulating notes outstanding of any national banking association, including notes secured by United States bonds as now provided by law, and notes secured otherwise than by deposit of

such bonds, shall not at any time exceed the amount of its unimpaired capital and surplus: *And provided further*, That there shall not be outstanding at any time circulating notes issued under the provisions of this Act to an amount of more than five hundred millions of dollars.

SEC. 6. That whenever and so long as any national banking association has outstanding any of the additional circulating notes authorized to be issued by the provisions of this Act it shall keep on deposit in the Treasury of the United States, in addition to the redemption fund required by section three of the Act of June twentieth, eighteen hundred and seventy-four, an additional sum equal to five per centum of such additional circulation at any time outstanding, such additional five per centum to be treated, held, and used in all respects in the same manner as the original redemption fund provided for by said section three of the Act of June twentieth, eighteen hundred and seventy-four.

SEC. 7. In order that the distribution of notes to be issued under the provisions of this Act shall be made as equitable as practicable between the various sections of the country, the Secretary of the Treasury shall not approve applications from associations in any State in excess of the amount to which such State would be entitled of the additional notes herein authorized on the basis of the proportion which the unimpaired capital and surplus of the national banking associations in such State bears to the total amount of unimpaired capital and surplus of the national banking associations of the United States: *Provided, however*, That in case the applications from associations in any State shall not be equal to the amount which the associations of such State would be entitled to under this method of distribution, the Secretary of the Treasury may, in his discretion, to meet an emergency, assign the amount not thus applied for to any applying association or associations in States in the same section of the country.

SEC. 8. That it shall be the duty of the Secretary of the Treasury to obtain information with reference to the value and character of the securities authorized to be accepted under the provisions of this Act, and he shall from time to time furnish information to national banking associations as to such securities as would be acceptable under the provisions of this Act.

SEC. 9. That section fifty-two hundred and fourteen of the Revised Statutes, as amended, be further amended to read as follows:

"SEC. 5214. National banking associations having on deposit bonds

of the United States, bearing interest at the rate of two per centum per annum, including the bonds issued for the construction of the Panama Canal, under the provisions of section eight of 'An Act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans,' approved June twenty-eighth, nineteen hundred and two, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of one per centum each half year upon the average amount of such of its notes in circulation as are based upon the deposit of such bonds; and such associations having on deposit bonds of the United States bearing interest at a rate higher than two per centum per annum shall pay a tax of one-half of one per centum each half year upon the average amount of such of its notes in circulation as are based upon the deposit of such bonds. National banking associations having circulating notes secured otherwise than by bonds of the United States shall pay for the first month a tax at the rate of five per centum per annum upon the average amount of such of their notes in circulation as are based upon the deposit of such securities, and afterwards an additional tax of one per centum per annum for each month until a tax of ten per centum per annum is reached, and thereafter such tax of ten per centum per annum, upon the average amount of such notes. Every national banking association having outstanding circulating notes secured by a deposit of other securities than United States bonds shall make monthly returns, under oath of its president or cashier, to the Treasurer of the United States, in such form as the Treasurer may prescribe, of the average monthly amount of its notes so secured in circulation; and it shall be the duty of the Comptroller of the Currency to cause such reports of notes in circulation to be verified by examination of the banks' records. The taxes received on circulating notes secured otherwise than by bonds of the United States shall be paid into the Division of Redemption of the Treasury and credited and added to the reserve fund held for the redemption of United States and other notes."

SEC. 10. That section nine of the Act approved July twelfth, eighteen hundred and eighty-two, as amended by the Act approved March fourth, nineteen hundred and seven, be further amended to read as follows:

"SEC. 9. That any national banking association desiring to withdraw its circulating notes, secured by deposit of United States bonds in

the manner provided in section four of the Act approved June twentieth, eighteen hundred and seventy-four, is hereby authorized for that purpose to deposit lawful money with the Treasurer of the United States and, with the consent of the Comptroller of the Currency and the approval of the Secretary of the Treasury, to withdraw a proportionate amount of bonds held as security for its circulating notes in the order of such deposits: *Provided,* That not more than nine millions of dollars of lawful money shall be so deposited during any calendar month for this purpose.

"Any national banking association desiring to withdraw any of its circulating notes, secured by the deposit of securities other than bonds of the United States, may make such withdrawal at any time in like manner and effect by the deposit of lawful money or national bank notes with the Treasurer of the United States, and upon such deposit a proportionate share of the securities so deposited may be withdrawn: *Provided,* That the deposits under this section to retire notes secured by the deposit of securities other than bonds of the United States shall not be covered into the Treasury, as required by section six of an Act entitled 'An Act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes,' approved July fourteenth, eighteen hundred and ninety, but shall be retained in the Treasury for the purpose of redeeming the notes of the bank making such deposit."

SEC. 11. That section fifty-one hundred and seventy-two of the Revised Statutes be, and the same is hereby, amended to read as follows:

"SEC. 5172. In order to furnish suitable notes for circulation, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved, in the best manner to guard against counterfeiting and fraudulent alterations, and shall have printed therefrom, and numbered, such quantity of circulating notes, in blank, of the denominations of five dollars, ten dollars, twenty dollars, fifty dollars, one hundred dollars, five hundred dollars, one thousand dollars, and ten thousand dollars, as may be required to supply the associations entitled to receive the same. Such notes shall state upon their face that they are secured by United States bonds or other securities, certified by the written or engraved signatures of the Treasurer and Register and by the imprint of the seal of the Treasury. They shall also express upon their face the promise of the association receiving the

same to pay on demand, attested by the signature of the president or vice-president and cashier. The Comptroller of the Currency, acting under the direction of the Secretary of the Treasury, shall as soon as practicable cause to be prepared circulating notes in blank, registered and countersigned, as provided by law, to an amount equal to fifty per centum of the capital stock of each national banking association; such notes to be deposited in the Treasury or in the subtreasury of the United States nearest the place of business of each association, and to be held for such association, subject to the order of the Comptroller of the Currency, for their delivery as provided by law: *Provided,* That the Comptroller of the Currency may issue national bank notes of the present form until plates can be prepared and circulating notes issued as above provided: *Provided, however,* That in no event shall bank notes of the present form be issued to any bank as additional circulation provided for by this Act."

SEC. 12. That circulating notes of national banking associations, when presented to the Treasury for redemption, as provided in section three of the Act approved June twentieth, eighteen hundred and seventy-four, shall be redeemed in lawful money of the United States.

SEC. 13. That all acts and orders of the Comptroller of the Currency and the Treasurer of the United States authorized by this Act shall have the approval of the Secretary of the Treasury who shall have power, also, to make any such rules and regulations and exercise such control over the organization and management of national currency associations as may be necessary to carry out the purposes of this Act.

SEC. 14. That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, with reference to the reserves of national banking associations, shall not apply to deposits of public moneys by the United States in designated depositaries.

SEC. 15. That all national banking associations designated as regular depositaries of public money shall pay upon all special and additional deposits made by the Secretary of the Treasury in such depositaries, and all such associations designated as temporary depositaries of public money shall pay upon all sums of public money deposited in such associations interest at such rate as the Secretary of the Treasury may prescribe, not less, however, than one per centum per annum upon the average monthly amount of such deposits: *Provided, however,* That nothing contained in this Act shall be construed to change or modify the obligation

of any association, or any of its officers for the safekeeping of public money: *Provided further*, That the rate of interest charged upon such deposits shall be equal and uniform throughout the United States.

SEC. 16. That a sum sufficient to carry out the purposes of the preceding sections of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated.

SEC. 17. That a Commission is hereby created, to be called the "National Monetary Commission," to be composed of nine members of the Senate, to be appointed by the Presiding Officer thereof, and nine members of the House of Representatives, to be appointed by the Speaker thereof; and any vacancy on the Commission shall be filled in the same manner as the original appointment.

SEC. 18. That it shall be the duty of this Commission to inquire into and report to Congress at the earliest date practicable, what changes are necessary or desirable in the monetary system of the United States or in the laws relating to banking and currency, and for this purpose they are authorized to sit during the sessions or recess of Congress, at such times and places as they may deem desirable, to send for persons and papers, to administer oaths, to summons and compel the attendance of witnesses, and to employ a disbursing officer and such secretaries, experts, stenographers, messengers, and other assistants as shall be necessary to carry out the purposes for which said Commission was created. The Commission shall have the power, through subcommittee or otherwise, to examine witnesses and to make such investigations and examinations, in this or other countries, of the subjects committed to their charge as they shall deem necessary.

SEC. 19. That a sum sufficient to carry out the purposes of sections seventeen and eighteen of this Act, and to pay the necessary expenses of the Commission and its members, is hereby appropriated, out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available and shall be paid out on the audit and order of the chairman or acting chairman of said Commission, which audit and order shall be conclusive and binding upon all Departments as to the correctness of the accounts of such Commission.

SEC. 20. That this Act shall expire by limitation on the thirtieth day of June, nineteen hundred and fourteen.